

# DEVELOPMENT AGREEMENT

between

**SAN FRANCISCO PORT COMMISSION**

and

**WATERFRONT DEVELOPMENT COMPANY**



*Ferry Port Plaza*

DOCUMENTS DEPT.  
SAN FRANCISCO  
PUBLIC LIBRARY

## FERRY PORT PLAZA

NOVEMBER 12, 1969

SAN FRANCISCO, CALIFORNIA

D  
REF  
387.1099  
D492



5/S

SAN FRANCISCO  
PUBLIC LIBRARY

REFERENCE  
BOOK

Not to be taken from the Library



SAN FRANCISCO PORT COMMISSION

Cyril Magnin, President

Earl Coke  
Sam H. Husbands, Jr.  
Daniel L. London

James J. Rudden  
Trevor C. Roberts  
Caspar W. Weinberger

Rae F. Watts, Port Director  
Miriam E. Wolff, Chief Counsel  
Harry Thiemann, Jr., Rental Manager

WATERFRONT DEVELOPMENT COMPANY

A Joint Venture Of:

Oceanic Bay Company, Inc.  
A California Corporation

Kipco, Inc.  
A Delaware Corporation

Represented By:

William Curlett, V. P.  
Richard M. Macfarlane, V. P.  
George Yim, V. P. & Sec.

Kendall Lutes, V. P.  
John W. Russell, V. P.  
Robert Krantz, Sec.

ATTORNEY FOR THE JOINT VENTURE  
Kenneth Myers of Brewer & Myers - Kansas City, Mo.

SPECIAL LEGAL COUNSEL - SAN FRANCISCO  
William Coblentz of Jacobs, Sills & Coblentz  
Hamilton W. Budge of Brobeck, Phlegar & Harrison

PROJECT MANAGER  
Dick M. Wilkinson

D REF 387.1099 D492

Development agreement  
between San Francisco  
1969.

3 1223 03552 1898

S.F. PUBLIC LIBRARY

## INDEX

	P a g e s
Summary of Development Agreement	1-10 (blue)
Summary of Lease	1-9 (green)
Development Agreement	1-27 (white)
Exhibit "A"	1 (white)
Exhibit "B"	1 (white)
Lease (Exhibit "C")	1-32 (yellow)
Exhibit "D"	1-3 (white)
Exhibit "E"	1-2 (white)



## S U M M A R Y

### SUMMARY OF THE DEVELOPMENT AGREEMENT BETWEEN THE SAN FRANCISCO PORT COMMISSION AND WATERFRONT DEVELOPMENT COMPANY

#### Background

By Statute, the State of California conveyed to the City and County of San Francisco all of its right, title and interest to property located along the Embarcadero, of which this subject area is a part. The Port Commission has authorized to lease such transferred real property, which is not required for wharves and other purposes. The Commission is authorized to lease portions of the transferred real property for periods not exceeding sixty-six years for the purpose of yielding maximum profits.

#### Parties

Lessor: San Francisco Port Commission.

Tenant: Waterfront Development Company, a joint venture composed of Oceanic Bay Company, Inc., a California corporation which is a wholly-owned subsidiary of Oceanic Properties, Inc., and Kipco Inc., a Delaware corporation which is a subsidiary of Kidder Peabody Realty Corporation.

#### 1. Definitions.

(a) Project Area: The property is described in Exhibit A attached to the Development Agreement and can be generally described as the area between the Embarcadero and the pier head line running from 225 feet south of Pier 1 to an irregular line approximately 150 feet north of Pier 7 and contains approximately 40 acres of submerged land.

(b) Lease Year: With respect to any lease, the term is defined as the calendar year unless tenant specifies some other period as a fiscal year.

(c) Gross Rental: The term means (i) the amount received by the tenant from others as consideration for the right to use and occupy the project area or portions thereof, plus the fair rental value of any improvements used by the tenant or an affiliate; less (ii) real property taxes and assessments with respect to any improvements located on the project area.





(d) Fair Rental Value: The term "Fair Rental Value" is the rental figure agreed to between the Commission and the tenant for portions of the project area, excluding piers, piling and decking, which are used or occupied by the tenant or an affiliate or relative. If the parties are unable to agree then there is a provision for the selection of the appraisers to determine such fair rental value. Fair Rental Value is not applicable to any other area except that used by the tenant or its affiliates.

(e) Improvements: The term includes all improvements of any kind including landscaping and fine arts.

(f) Affiliate: The term includes any person, corporation, partnership, limited partnership, joint venture, trust or other entity controlling, controlled by, or in common with the tenant. The word "control" means such ownership sufficient to exercise voting control or decision-making authority.

(g) Parcels: The term means any portion of the project area covered under a separate lease.

(h) Lease: The term means a lease in the form attached as Exhibit C to the agreement.

(i) Total Cost of Development: The phrase includes all cost incurred in the development and completion of improvements, including lease acquisition, feasibility and market analysis fees, financing discounts and charges, and financing fees.

2. Leasing and Parcelization. The Commission agrees to lease to the tenant and the tenant agrees to lease from the Commission the entire Project Area and the tenant agrees to develop the Project Area or cause it to be developed in accordance with the provisions of the Scope of Development attached to the Agreement as Exhibit D.

The tenant may develop the project in stages and may request leases for such portions (not less than 25,000 square feet) from time to time. Under the first lease the area shall not exceed 40% of the Project Area unless such lease takes the entire Project Area. The entire area of any existing pier must be leased at one time.

Separate leases are executed for each portion of the Project Area and shall be executed so as to complete the development of the project in accordance with the tentative schedule of development attached to the agreement and marked Exhibit E.

Not later than December 31, 1970, the tenant shall specify the first parcel; notices to be given 60 days, but not more than 120 days, prior to the date of execution and shall specify the date of execution and commencement of the term of the Lease. Prior thereto certain conditions must be met or waived by tenant. These conditions are set forth in subparagraphs (c), (e) and (f) of Paragraph 24 (see page 6 herein).



# S U M M A R Y

Within 180 days after date of document, feasibility report is to be furnished to the Commission by Tenant.

3. Rental. For each parcel rental shall be as follows:

(a) Minimum Rental: Annual minimum rental of \$400,000 for the Project Area. The first parcel leased shall provide for annual minimum rental of \$150,000 unless such lease includes the entire project area. Leases thereafter will have an annual minimum rental equal to that proportion of \$250,000 which the area of the platform for the parcel being leased bears to the total number of square feet of the total platform to be constructed, the platform areas to be exclusive of areas used for public streets, sidewalks or other public purposes.

(i) The minimum rental is payable in equal monthly installments in advance on the 5th day of each calendar month commencing with the first full calendar month after completion of the improvements upon the parcel leased or after such improvements shall be occupied or operated, whichever event first occurs (but in no event later than 24 months after the commencement of the term of such lease).

(ii) All minimum rental shall be credited against percentage rentals payable under such lease, in the order of accrual, until credited in full for the initial five lease years of the term of such lease. NOTE: For example, if \$300,000 of minimum rent had been paid before any percentage rentals are payable, the \$300,000 would be credited against any percentage rentals which become payable for the first five years. Commencing with the sixth lease year, there shall be no further credit for minimum rentals; thereafter, the minimum is credited against percentage rentals each year.

(b) Percentage Rental: Percentage rentals are set forth for each type of use and are payable (i) after completion of improvements, (ii) after gross rental becomes payable to tenant, or (iii) after improvements constructed are occupied by the tenant, whichever occurs first. The percentage of the gross rental (hereinafter defined) for the various uses are as follows:

<u>Use</u>	<u>Percentage Rent</u>
Garage and Parking	6%
Hotel and Motor Hotel*	3%
Offices	3%
Retail and Other Commercial Uses	5%
Residential	2%
Utilities	7%

\*Hotel and Motor hotel are structures used for such purposes and other commercial uses related thereto provided there is a sublease or arrangement with the hotel or motel operator.



## S U M M A R Y

In any lease year, if the gross rental exceeds 16% of the total cost of development, the Commission shall be paid additional rent equal to 20% of that excess. The gross rental will be adjusted downward to reflect the increased cost-of-living and inflation from the time that construction is completed based on Department of Labor's Consumer Price Index or a comparable successor index. The tenant shall furnish the Commission the total cost of development for each parcel.

(c) Possession: Commission to deliver possession of each parcel on the commencement of the term of the lease with no occupants or persons in possession except that if the lease should cover the heliport area prior to August 1, 1970, then the lease shall be made subject thereto. If the area of the heliport is leased by the tenant after July 31, 1970, then the area shall be delivered free of the heliport lease unless the tenant has consented in writing to renewal or extension of the lease beyond that time. The Commission cannot renew or extend the heliport lease without such prior written consent of the tenant which shall not be unreasonably withheld unless it adversely affects the development program.

5. Zoning. If the project area requires a change in zoning in order to permit the development then the Commission shall cooperate with the tenant to obtain such reasonable zoning prior to the commencement of the term of the lease governing that parcel.

6. Form of Lease. The lease form is attached as Exhibit C to the Development Agreement.

7. Term of Lease. Each lease shall commence on the established date but not later than December 31, 1974, and the term of all leases for portions of the Project Area shall end 66 years after the commencement date of the term of the first lease to be executed.

8. Title Insurance and Cost of Clearing Title. Costs shall be borne by the tenant. The Commission shall revoke, cancel and terminate all existing licenses and easements in that portion of the project area leased and shall cause all improvements owned by the licensees to be removed without cost to the tenant; provided that tenant shall make arrangements with the Pacific Telephone & Telegraph Company for the removal of existing cables or, at tenant's option, to design improvements so as not to disturb such cables. Any easement or license holder shall pay a reasonable rent to tenant. All premiums for title insurance policies shall be paid by the tenant including any escrow fees or charges.

9. Condition of Title. The title to each portion of the project area shall not have any unrecorded or recorded encumbrances, etc., except for (a) the State of California rights to subsurface mineral deposits together with the right





## S U M M A R Y

of ingress and egress for exploration and drilling and extraction which shall not be exercised so as to disturb or interfere with the leasehold estate of tenant; (b) taxes for the year; (c) reversion to the State pursuant to statutes subject to such lease, the Development Agreement and other obligations related to the project area; (d) a reservation of the Legislature of the State to amend, modify or revoke the transfer of lands pursuant to statute with the State assuming all of the Commission's obligations under the new Development Agreement and such leases of parcels of a project area; (e) easements provided by tenant for relocated utility lines; (f) the helicopter lease; and (g) reservation to the Commission of an easement for navigation and communication purposes across the water fifty feet or more outside the perimeter of the platform, which shall not include mooring or storage of vessels or improvements. The Commission agrees to cooperate to perfect and quiet the title of the project area. The tenant to pay cost of any suit.

10. Acts of Other Governmental Bodies. In the event the Commission is precluded or unable to deliver the lease to any portion of the project area due to any acts of government or courts then the tenant may terminate the Development Agreement, except for parcels already leased. The Commission is not excused for failure to deliver a lease if such failure results from its voluntary act.

11. Time for Execution and Delivery of Leases. The Commission and tenant agree to execute leases to conform to the schedule of development (Exhibit E) and in accordance with paragraph 2.

12. Compliance with Conditions. Commission and tenant agree to perform all acts necessary to the execution of each lease in sufficient time.

13. Place of Delivery of Leases. The tenant's executed copy of the lease for each parcel shall be delivered to the Title Insurance and Trust Company in San Francisco.

14. Taxes. The tenant has no obligation to pay real estate or other taxes and assessments prior to the commencement of separate leases and possession of leased areas shall be delivered free and clear of such taxes and assessments prior to the commencement of each lease.

15. Short Form. At tenant's request a short form of the lease will be executed and recorded.

16. Deposits. The Developer, simultaneously with the execution of each lease, shall deliver to the Commission a deposit equal to \$4,356.00 per acre for security of performance for each lease in (a) cash, (b) surety bonds, (c) negotiable instruments and in any combination and may be changed from time to time. Deposits to be held under conditions set forth in Exhibit C. There is no obligation to pay or earn interest.





17. Tentative Schedule of Development. Construction of improvements shall commence to meet the scheduled dates set forth on Exhibit E, the schedule of development, except as such schedule may be extended by mutual agreement or excused by other provisions hereof.

18. Notices and Demands. Notices given if deposited by registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

(a) Tenant

c/o Oceanic Properties, Inc.  
One Bush Street 13th Floor  
San Francisco, California 94104

(b) Commission

San Francisco Port Commission  
Ferry Building  
San Francisco, California 94111

or such other address as designated in writing to the other.

19. Entire Agreement. The Development Agreement supersedes all negotiations and previous agreements between the parties.

20. Effect of Defaults. No default with respect to one or more leases shall impair or affect any leases already executed in which no default has occurred. The injured party will give notice of default to the other who will have sixty (60) days or such longer period as reasonably may be required to remedy the default and suits or proceedings may not be instituted until the end of such periods.

21. Estoppel Certificates. Upon request of the tenant the Commission shall furnish written statements concerning the situation of any lease and third parties may rely thereon.

22. Access. The Commission shall provide access from the Embarcadero to the project area adequate for planning and development. Prior to any leases, the tenant may enter on the project area for soil testing and surveying except that tenant shall not interfere with existing tenancies unreasonably.

23. Amendment of Statute. Unless previously amended the Commission will use its best efforts to amend the existing statute to provide that upon reversion of the project area to the State of California, or an amendment, revocation or modification of the statute, the State of California shall assume all the obligations of the Commission under the Development Agreement or any leases and all other lawful obligations related thereto.

24. Conditions to Tenant Obligations. The Tenant may cancel the Development Agreement on areas not leased on the



## S U M M A R Y

following conditions:

(a) The Commission fails to execute a lease in the form and substance provided.

(b) The tenant is unable after using due diligence for a period of ninety (90) days or more, to obtain mortgage financing for the completion of improvements in an amount equal to at least 80% of the total cost of the development of such parcel on such terms considered satisfactory generally by builders and contractors for the type of construction proposed.

(c) A feasibility report shows inadequate justification to the uses permitted by, and upon the terms and conditions of the Development Agreement and that the improvements for investment purposes based on the rental demand cannot be justified.

(d) Failure to obtain all permits and approvals from government agencies or others (including Planning Commission, BCDC) prior to the date for leasing, or having been granted the permits or approvals expire, are revoked or declared invalid.

(e) Failure to obtain adequate and satisfactory title insurance.

(f) There is unsatisfactory occupancy rates specifically spelled out for improvements of the same type and nature constructed upon other parcels within the project area.

(g) The Developer is unable to obtain equity financing for the completion of improvements upon a parcel covering the excess of the total cost of development over the mortgage financing obtained therefor.

(h) Failure to obtain approval of the U. S. Engineer Corps. for the bulkheading and filling and for permanent pile-supported structures upon the parcel within six months after submission of such plans, and the tenant shall reimburse engineering costs for such process.

(i) If any laws or regulations are adopted by the government or its agencies, or if there are any court decisions or judgments which prohibit or render economically unfeasible the use of the project area for the purpose contemplated.

(f) The zoning does not permit construction and uses according to this Development Agreement.

(k) Failure to obtain an amendment to present laws so as to provide that the State of California, upon revision pursuant to the laws or amendment, revocation or modification thereof, shall assume the obligations of the Port Commission. The amendment must take place before the close of the 1968-69 Legislative Session.



NOTE: Since the right of cancellation is in the tenant, the tenant may waive any of the above conditions and continue such development, if possible. The cancellation of the Development Agreement will not affect parcels already leased prior thereto.

25. Demolition. The existing improvements are to be demolished by the tenant at its expense upon approval of the Chief Engineer of the Commission of the plans and methods thereof. Any relocation of sewer or utility lines shall be done without cost to the Commission.

26. Agreement not Merged and Leases. Development Agreement shall not merge by reason of any lease and no lease shall affect this Development Agreement.

27. Force Majeure. The tenant shall not be in default for delays where defaults are due to numerous cited instances, all of which are determined by the Commission to be an extension of time where such causes shall commence if notice is given within thirty (30) days after commencement of the cause.

28. Law Governing. The laws of the State of California govern the interpretation and enforcement of the Development Agreement.

29. Remedies. In addition to those provided in law and equity, both the Commission and the tenant is entitled to specific performance.

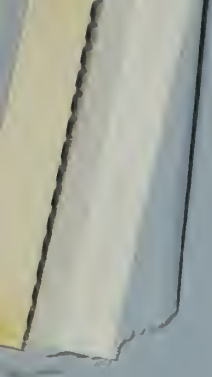
30. Assignment. The Agreement shall not be assigned without prior written consent of the Commission which shall not be unreasonably withheld. This provision does not affect provisions of any lease concerning assignment in subletting.

31. Mortgage or Deed of Trust Holder. The holder of any mortgage or deed of trust on any parcel or leasehold interest therein shall not be obligated to complete the improvements or to guarantee such construction or completion.

32. Restrictions Upon Other Property. Commission shall not without the tenant's consent within five (5) years after the date of the agreement lease any other property within five hundred (500) feet of the project area for hotel, motor hotel, or multi-family residential use.

33. Waivers and Amendments. Amendments must be signed by both parties and in the case of a waiver, by the party waiving a provision.

34. Government Approvals. The Commission agrees to cooperate and use due diligence to assist in obtaining any and all approvals from government agencies or offices having jurisdiction.



35. No Partnership Created. Notwithstanding the percentage rental or any other provision, the Commission shall not be construed to be a partner of the tenant which is to be at all times that of lessor and lessee.

36. Right of Refusal. The Developer has the right of first refusal based on matching the best bid for the development of any submerged lands bounded on the north by the northerly line of Pier 9.

37. Assurance of Performance. Within ninety (90) days after the execution of the Development Agreement, the Developer must deliver to the Commission a surety bond of \$250,000 to secure the performance of the Developer and to indemnify the Commission from cost of damages which may occur because of the Developer's failure to perform. The Developer would not be liable for any damages in excess of the amount of the surety bond. The bond will be maintained until the entire project area is leased or until early termination of the agreement.

SAN FRANCISCO PORT COMMISSION

By \_\_\_\_\_  
Port Director

OCEANIC BAY COMPANY, INC.

By \_\_\_\_\_

KIPCO, INC.

By \_\_\_\_\_

"By resolution adopted by the San Francisco Port Commission this 3rd day of September, 1969, by the following vote:

Ayes: Mr. Magnin, Mr. Rudden, Mr. Husbands,  
Mr. Roberts

Noes: 0

Absent: Mr. Weinberger, Mr. Coke

Abstaining: Mr. London

the San Francisco Port Commission approved the aforesaid.







S U M M A R Y

Development Agreement and authorized the Port Director to execute said Development Agreement on behalf of the Port.

/s/ John O. Yeomans  
John O. Yeomans, Assistant Secretary  
San Francisco Port Commission"



## SUMMARY OF LEASE FORM

Attached as Exhibit C to Development Agreement between San Francisco Port Commission and Waterfront Development Company

### PARTIES

Lessor: San Francisco Port Commission

Lessee: Waterfront Development Company

### 1. DEFINITIONS

a. Leased Premises: Described in Exhibit A to be attached to the lease.

b. Lease Year: The term means calendar year unless the tenant specifies a fiscal year.

c. Gross Rental: The term means (i) the amount received by the tenant from others as consideration for the right to use and occupy the leased premises or improvements thereon (excluding consideration received for the bill or transfer of any improvements), plus the fair rental value of any improvements used by the tenant for the period (excluding piers, piling and decking) less (ii) real property taxes and assessments to the premises or improvements thereon.

d. Fair Rental Value: The term is the rental agreed to between the Commission and the tenant for portions of the project area, excluding piers, piling and decking, which are used or occupied by the tenant. Failing agreement, appraisers determine fair rental value. NOTE: Fair rental value is not applicable to any other area except that used by the tenant or affiliates.

e. Improvements: The term includes all improvements of any kind including landscaping and fine arts.

f. Affiliate: The term includes any person, corporation, partnership, limited partnership, joint venture, trust or other entity controlling, controlled by, or in common control with the tenant.

g. Control: The term means ownership sufficient to control voting or decision-making authority.

### 2. LEASE

The parties agree to lease the premises.

### 3. TERM

The term of the lease is to be inserted but must commence, pursuant to the Development Agreement, not later than December 31, 1974 and shall terminate within



sixty-six years after the commencement date of the term of the first lease to be executed. NOTE: Therefore, the terms of each lease will vary depending upon the commencement date and will all terminate at the same time.

#### 4. RENTAL

a. Minimum Rental: The minimum rent is to be inserted and is to commence when the improvements are completed, or when they are occupied, whichever event occurs first; but in any case shall commence no later than 24 months after the commencement of the lease. Improvements are complete when notice of completion and certificates of occupancy are obtained. Minimum rent is paid in advance on the 5th day of each calendar month. NOTE: The Development Agreement provides that the first parcel leased shall carry a minimum rent of \$150,000 and leases thereafter will have minimum rental proportional to \$250,000 based on the platform area of each leased parcel compared to the total platform area.

b. Crediting of Minimum Rental: Minimum rent for the first five years will be credited against the percentage rent payable for that period. With the sixth year the minimum rent is credited against percentage rent for each year.

c. Percentage Rental: Percentage rental for each year after occupancy or use of improvements is based on the percentage of the gross rental or the following uses:

<u>Use</u>	<u>Percentage Rental For That Use</u>
Garage and Parking	6%
Hotel and Motor Hotel*	3%
Office	3%
Residential	2%
Payments made by Utilities	7%
Retail and Other Commercial Uses Not Listed	5%

\*Defined in Lease. Includes  
accessory uses under a  
hotel operation

In any Lease Year if the gross rental exceeds 16% of the total cost of the development the Commission shall be paid additional rent equal to 20% of that excess. The gross rental will be adjusted downward to reflect the increased cost of living and inflation from the time that construction is completed based on Department of Labor's Consumer Price Index. Tenant shall furnish the Commission the total cost of development for each parcel.



The percentage rent and the additional rent are payable within sixty days after the end of the Lease Year.

d. Annual Statement: Tenant shall furnish statement of gross rental within sixty days following the end of each Lease Year.

e. Records; Audits: Notwithstanding the acceptance of rental, the Commission can view the tenant's records to verify the rental due. If the statements are understated by more than 5%, the tenant must pay for the audit, as well as the shortage.

## 5. DEPOSIT

The deposit figure is to be inserted and, pursuant to the Development Agreement, shall be equal to \$4,356 per acre and can be in the form of cash, surety bonds, negotiable instruments or any combination and may be changed from time to time.

## 6. DEFAULT

a. The following constitute defaults:

1. failure to pay rent for 30 days;
2. failure to cure other defaults within 60 days after notice;
3. the appointment of a receiver to take possession of the assets of the tenant;
4. assignment for benefit of creditors;
5. voluntary petition for insolvency or bankruptcy; and
6. involuntary petition for bankruptcy not dismissed within 90 days.

b. Remedies: Upon default the Commission can terminate the lease or, without terminating, relet the premises. Upon reletting the tenant is liable for expenses, deficiencies in rent and any damages.

## 7. SECURITY INTEREST

Parties acknowledge that the tenant's leasehold estate may be encumbered as security for indebtedness. For the benefit of such secured party, the parties agree as follows:

a. The execution of such security and action thereon is not a violation of the lease nor an assumption by the lender of any obligations of the tenant except as provided in subparagraph (c) below.





b. The lender can perform the obligations of the tenant to prevent termination of the lease.

c. Commission agrees that the lender can, under enforcing such security, assign and sell the leasehold and the interest of the tenant in the improvements. The lender shall assume the obligations of the tenant thereunder without obligations to construct or complete any improvements.

d. The lender, upon acquiring tenant's interest by foreclosure, may sublease or assign the leasehold estate, subject to the lease which shall be performed by the purchaser or assignee.

e. The tenant is not released from liability upon foreclosure.

f. After notice the lender shall have sixty days to cure a default.

g. Lender shall give notice to the Commission of its address and nature of its security interest or waive the right to receive written notice hereunder.

#### 8. STREET AREAS

The tenant may dedicate any street on the premises to the City for public use.

#### 9. SUBLETTING ASSIGNMENT

a. Tenant may sublet portions of the premises at its discretion subject to the terms of the lease without relief of the tenant from such obligations; and tenant shall give notice to the Commission of such sublease, and tenant shall furnish a copy of the sublease to the Commission within 30 days after execution.

b. Tenant, upon prior notice of its intention, may assign the lease or its interest in any portion to financial institutions, or to any other assignee whose financial responsibility shall be subject to the approval of the Commission which will not be unreasonably withheld. Tenant shall give Commission notice of the assignment and furnish a copy of the assignment within thirty days. After assignment, tenant has no further liability under the lease except for completion of improvements said tenant is obligated to construct.

c. In the event of termination due to the default, any sublessee of more than 10% of the area of the leased premises can attorn to the Commission and the lease shall be directly between them thereafter.

#### 10. USE OF THE LEASED PREMISES

a. Tenant shall develop and use the premises as set forth in the scope of development to be attached



to the lease as Exhibit B. Other uses must have the Commission's consent which will not be unreasonably withheld. Building permits shall be obtained and all construction shall conform to the Building Code.

b. Tenant can make portions available for public use by mutual agreement. The tenant can dedicate streets. Commission shall join in the dedication not to extend beyond the term of the lease.

#### 11. DESTRUCTION; FIRE INSURANCE

a. In the event of partial or total destruction within the first 45 years, the tenant within 180 days shall restore the improvements and replace the same. During the balance of the term or if destruction is caused by earthquake or cause for which insurance was not obtainable, the tenant shall either restore or terminate the lease within 90 days. Upon termination the tenant shall demolish the improvements unless the Commission within 10 days' written notice of the termination desire to retain the same.

b. Tenant shall provide insurance for fire, explosion, lightning, etc., loss or damages to the extent of 90% of the replacement cost. Policies to be placed with insurance companies authorized to do business in California.

c. Rent shall continue to be paid during the period of loss equal to the minimum rent or the average annual rental both minimum and percentage for the previous three years.

#### 12. INDEMNIFICATION; LIABILITY INSURANCE

a. Tenant agrees to indemnify the Commission from all liabilities and claims or injuries, death or damages to property from any cause connected with the use of the leased premises.

b. Tenant will pay premiums on such insurance. The policies will have amounts not less than \$500,000 for injury or death to one person and \$1,000,000 for injury or death in any one accident and \$1,000,000 for property damage. Certificate must be furnished to the Commission evidencing such insurance.

#### 12. WAIVER OF CLAIMS

Tenant waives any claims for any cause arising from the negligence of the Commission, its officers, agents or employees.

#### 13. COMPLIANCE WITH LAW

Tenant shall observe and comply with the laws, rules and regulations applicable to the premises.



15. TAXES

Tenant shall pay all real estate and possessory interest taxes on the premises and improvements.

16. ENTRY BY THE COMMISSION

Commission can enter to inspect and post notices at all reasonable time.

17. IMPROVEMENTS AND ALTERATIONS

a. Tenant has the right to construct and to change or alter improvements for uses set forth in Exhibit B and prior consent of the Commission is required to consent for other uses. Exterior or structural changes must have the prior approval of the Commission. Approval must be given within fifteen days or shall be deemed to be approved.

b. Tenant shall keep the improvements in good condition.

c. Commission disclaims ownership of any improvements and agrees that the tenant may remove all trade fixtures and personal property at the expiration of the lease and repair any damages caused by such removal; provided that at its election the tenant may abandon such trade fixtures.

18. MECHANIC'S LIENS

Tenant shall keep the premises and improvements free and clear from any liens.

19. EMINENT DOMAIN

a. Upon or on threat of condemnation;

b. Commission can agree to sell or convey any land without instituting action. Tenant is not entitled to claim any part of the award, and the tenant will transfer its interest in the lease to the Commission.

c. The tenant can also agree to sell or convey any improvements and the Commission shall have no claim on any such award.

d. If an easement only is taken, that portion is removed from the leased premises and rent shall be reduced. If the remainder is affected then tenant can cancel the lease upon notice.

e. Tenant can claim compensation for damage to its business and for alterations or improvements so long as it does not diminish the compensation payable to the Commission.



f. If the Commission or the City and County of San Francisco condemns, their award to the tenant shall not be less than the total cost of the development as defined, less 1.5% per annum from the date of completion.

## 20. ATTORNEYS' FEES

Upon any action, the prevailing party shall be entitled to attorneys' fees to be fixed by the court.

## 21. BREACH NOT WAIVED

The waiver of breach does not constitute a waiver of any subsequent breach. Acceptance of rent is not a waiver of breach. No act or omission shall alter the lease which can only be done by written agreement of the parties.

## 22. TERMINATION AND QUIT CLAIM

Upon expiration or earlier termination, the tenant will surrender the premises and deliver a quit claim deed.

## 23. HOLDING OVER

Holding over shall be deemed a month-to-month tenancy on the same terms. In such event either party may cancel upon thirty (30) days' notice.

## 24. NOTICES

Notices shall be in writing delivered personally or by mail as follows:

To the Commission:

San Francisco Port Commission  
Ferry Building  
San Francisco, California 94111

To the tenant:

c/o Oceanic Properties, Inc.  
One Bush Street  
San Francisco, California 94111

## 25. ACCESS

The Commission represents and warrants that the tenant shall have full rights and access from the leased premises for its purposes. The Commission shall assist in securing such if necessary. Default can cause the tenant to terminate this lease.







26. SHORT FORM

Short form will be executed and recorded as requested by the tenant prior to the expiration of sixty (60) days after this lease.

27. PARTNERSHIP

No partnership is created.

28. WAIVER OF SUBROGATION

Rights of subrogation under fire insurance policies are waived by both parties.

29. QUIET ENJOYMENT

Commission covenants that tenant shall have quiet enjoyment.

30. ADDITIONAL RIGHTS OF TERMINATION

The construction of the improvements specified in the scope of development must commence by the date or the Commission may terminate the lease. NOTE: The scope of development does not call for any definite commencement dates. This may be an error and may be in reference to the tentative schedule of development.

31. EFFECT OF TERMINATION

Both parties are released from liability subject to subparagraph b. under "DEFAULT."

32. DEVELOPMENT AGREEMENT

The lease is being executed pursuant to the Development Agreement and is subject thereto and no default under any lease for a portion of the project area and no default on the Development Agreement shall constitute a default on any lease hereunder.

33. NON-DISCRIMINATION PROVISION

The non-discrimination provision is attached as Exhibit C and the term "contractors" is intended to cover the tenant.

34. SUCCESSORS AND ASSIGNS

The covenants and conditions shall apply to the heirs, executors, administrators, personal representatives, successors and assigns of all the parties hereto.



35. MODIFICATION

The parties may agree to modify the terms of the lease.

36. SUBLEASE CLAUSE

Tenant shall provide a sublease clause that if the sublessee fails to use the property for the purposes subleased then the tenant or the Commission may terminate the sublease.

37. MINERAL RESERVATION

The State of California pursuant to applicable laws reserves all subsurface mineral rights. Commission grants the State the right to explore and drill for such in not more than three points, selected by the State, which points when not improved on August 13, 1969 and are on a line parallel with and 100 feet south of the southerly boundary of the project area defined in the Development Agreement.

38. SIGNS

No sign visible from the Embarcadero or the Bay or the Freeway can be installed without approval which shall not be unreasonably withheld.

39. TIME OF ESSENCE

Time is of the essence for each and all terms and provisions of the lease.

Execution by the San Francisco Port Commission members and by Waterfront Development Company, a joint venture, by Oceanic Bay Company, Inc. and Kipco Inc.



DEVELOPMENT AGREEMENT

BETWEEN

SAN FRANCISCO PORT COMMISSION

AND

WATERFRONT DEVELOPMENT CO.



INDEX TO DEVELOPMENT AGREEMENT

	<u>Page</u>
1. Definitions -----	2
(a) Project Area -----	2
(b) Lease Year -----	3
(c) Gross Rental -----	3
(d) Fair Rental Value -----	3
(e) Improvements -----	4
(f) Affiliate -----	5
(g) Parcels -----	5
(h) Lease -----	5
(i) Total Cost of Development -----	5
2. Leasing and Parcelization -----	5
3. Rental -----	7
(a) Minimum Rental -----	7
(b) Percentage Rentals -----	8
4. Possession -----	10
5. Zoning -----	10
6. Form of Lease -----	10
7. Term of Lease -----	11
8. Title Insurance and Costs of Clearing Title --	11
9. Condition of Title -----	11
10. Acts of Other Governmental Bodies -----	13
11. Time for Execution and Delivery of Leases ----	13
12. Compliance with Conditions -----	13
13. Place of Delivery of Leases -----	14
14. Taxes -----	14
15. Short Form -----	14
16. Deposits -----	14
17. Tentative Schedule of Development -----	15
18. Notices and Demands -----	15





	<u>Page</u>
(a) Tenant -----	15
(b) Commission -----	15
19. Entire Agreement -----	16
20. Effects of Defaults -----	16
21. Estoppel Certificates -----	16
22. Access -----	16
23. Amendment of Statute -----	17
24. Conditions to Tenant's Obligations -----	17
25. Demolition -----	21
26. Agreement Not Merged in Leases -----	21
27. <u>Force Majeure</u> -----	21
28. Law Governing -----	22
29. Remedies -----	22
30. Assignment -----	22
31. Mortgage or Deed of Trust Holder -----	22
32. Restrictions upon Other Property -----	22
33. Waivers and Amendments -----	23
34. Governmental Approvals -----	23
35. No Partnership Created -----	23
36. Right of Refusal -----	23
37. Assurance of Performance -----	24



DEVELOPMENT AGREEMENT

THIS AGREEMENT, made on the 12th day of November, 1969, by and between the SAN FRANCISCO PORT COMMISSION (hereinafter called the "Commission") and WATERFRONT DEVELOPMENT CO., a joint venture composed of OCEANIC BAY COMPANY, INC., a California corporation, and KIPCO, INC., a Delaware corporation, (hereinafter called the "Tenant");

W I T N E S S E T H :

WHEREAS, there has been transferred and conveyed, pursuant to the provisions of the Statutes of 1968, Chapter 1333, approved by the Governor of California on August 14, 1968, and filed with the Secretary of State of California on August 14, 1968, to the City and County of San Francisco, a municipal corporation of the State of California, all of the right, title and interest held by the State of California in and to the real property located in the City and County of San Francisco, California, which lies within the perimeter description set forth in Harbors and Navigation Code, Section 1770, together with those additional lands which are the properties of the State of California and which are set forth in Harbors and Navigation Code, Section 1772, and the property as shown in Book B192, page 384, Recorder's Office, City and County of San Francisco, recorded November 13, 1967, subject to the exceptions and reservations as more particularly set forth in said statute; and

WHEREAS, pursuant to paragraph 6 of Section 3 of the Statutes of 1968, Chapter 1333, the Commission is authorized to lease any portions of such transferred real property, which it determines is not required for any of the uses described in said Section 3, for periods not exceeding 66 years, for the purposes of such development and use as the Commission finds will yield maximum profits; and

WHEREAS, the Tenant desires to lease and develop all of that certain real property in the City and County of San Francisco, State of California, described in Exhibit A which is attached hereto and incorporated herein by reference (the "Project Area") and de-



lineated upon Exhibit B which is attached hereto and incorporated herein by reference, being part of the real property transferred and conveyed to the City and County of San Francisco as aforesaid and consisting generally of the submerged and filled lands bounded on the North by an irregular line ranging from one hundred and fifteen feet (115') to two hundred feet (200') south of the Southerly line of Pier No. 9, as said Pier existed on January 1, 1969, and said line prolonged Easterly; bounded on the West by the City of San Francisco Eastern line of the sidewalk along and abutting the City of San Francisco Eastern curb line of the Embarcadero, as said sidewalk and said curb line of the Embarcadero existed on January 1, 1969; bounded on the South by a line parallel with and two hundred twenty-five feet (225') south of the extreme Southerly line of Pier No. 1, as said Pier existed on January 1, 1969, and said line prolonged Easterly; and bounded on the East by the Pier Head Line as the same existed on January 1, 1969; and

WHEREAS, the Commission has determined that the Project Area is not required for wharves and other public uses and purposes, or any use (other than as herein provided for) described in Section 3 of the Statutes of 1968, Chapter 1333, and the Commission has determined that the development and use herein provided for will yield maximum profits to be used by the Commission in the furtherance of commerce and navigation;

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of the parties does hereby covenant and agree with the other as follows:

1. Definitions. Unless the context otherwise specifies or requires, wherever used in and for all purposes of this Development Agreement, the following terms shall have the meanings herein indicated:

(a) Project Area. The term "Project Area" shall mean all of that certain real property in the City and County of San Francisco, State of California, described in Exhibit A which is attached hereto and incorporated herein by reference.

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

THE HISTORY OF ARTS

(b) Lease Year. The term "lease year" with respect to any Lease shall mean a calendar year unless the Tenant at its option specifies some other period of twelve consecutive months as a fiscal year; provided, however, that once the Tenant specifies a fiscal year as the "lease year" under any Lease, then thereafter the Tenant may not change such fiscal year (and lease year) for purposes of that Lease without the prior written consent of the Commission.

(c) Gross Rental. The term "gross rental" shall mean: (i) the amount received by the Tenant from another or others as consideration for the right to use and occupy the Project Area, or any part or portion thereof, or any improvements thereon (excluding, however, consideration received by the Tenant or an affiliate of the Tenant for the conveyance or transfer of ownership of, or for the conveyance or transfer other than by lease or sublease of any interest in, any improvements), plus the fair rental value of any improvements (or any part or portion thereof) made upon but not including piers, piling and decking, which improvements are constructed upon the Project Area and after completion are used or occupied by the Tenant, an affiliate or relative of the Tenant, or the owner of improvements conveyed or transferred (other than by lease or sublease or assignment of this Lease) by the Tenant or an affiliate or relative; less (ii) all real property taxes and assessments, general and special, and other public charges levied, assessed or imposed upon or with respect to the Project Area, or such part or portion thereof, or levied, assessed or imposed upon or with respect to any improvements located upon the Project Area, which taxes and assessments have been or are to be paid by the Tenant; provided, however, that all such taxes, assessments and public charges for the tax year in which a Lease terminates shall be equitably prorated on the basis of such tax year.

(d) Fair Rental Value. The term "fair rental value" shall mean such rental figure as the Commission and the Tenant may agree upon as the fair annual rental for the portion of the Project Area in question. If the parties are unable to







agree upon a rental figure, then the fair rental value shall be determined by an appraiser mutually acceptable to the Commission and the Tenant, who is a member of the American Institute of Real Estate Appraisers or of an organization of similar professional reputation and is familiar with the value of commercial property in San Francisco. If the Commission and the Tenant fail to agree upon a mutually acceptable appraiser within thirty (30) days after either in writing shall demand an appraisal, then, within fifteen (15) days after the end of such thirty-day period, each party shall select an appraiser and shall notify the other party in writing of the name of the appraiser so selected, and the two appraisers so selected shall select a third appraiser; provided, however, that if either party fails to select an appraiser or to give such notification within such fifteen-day period, then the appraiser selected by the other party shall act as the sole appraiser; and provided further that if the first two appraisers so appointed by the Commission and the Tenant shall fail to select a third appraiser within fifteen days after their appointment, then the third appraiser shall be selected by the then Senior Judge of the United States District Court for the Northern District of California. Such appraiser or appraisers shall determine the fair rental value of the portion of the Project Area in question using as a standard the rental value, determined on the basis of a gross lease, of comparable premises used for comparable purposes, and such determination shall be final and binding on the parties. The fees of such appraiser or appraisers shall be borne one-half by the Commission and one-half by the Tenant. If there shall be more than one appraiser, then the decision of a majority shall govern and be binding on the parties.

(e) Improvements. The term "improvements" shall mean and include all piers, pilings, decks, platforms, buildings, structures, fixtures, landscaping, fine arts, recreational facilities, driveways, walks, and all other improvements of every



kind and nature.

(f) Affiliate. The term "affiliate" shall mean and include any person, corporation, partnership, limited partnership, joint venture, trust or other entity controlling, controlled by, or in common control with the Tenant. The words "controlling", "controlled" and "control" shall mean the ownership of stock, a partnership interest or other interest, sufficient to entitle the holder or owner thereof to exercise effective voting control or other decision making authority.

(g) Parcels. The term "Parcel" shall mean and include any portion or part of the Project Area which shall be leased to the Tenant under a separate Lease, and the term "Parcels" shall include two or more or all of the portions or parts leased to the Tenant under separate Leases.

(h) Lease. The term "Lease" shall mean a Lease in the form and substance of the instrument attached hereto and marked "Exhibit C", and the singular shall include the plural.

(i) Total Cost of Development. The phrase "total cost of development" shall mean and include costs of lease acquisition, feasibility and market analysis fees, demolition of existing improvements, removal, installation or moving of utilities, construction of piers, pilings, decks and other site work, landscape work, construction of improvements, landscaping, contractors' fees, architects' and engineers' fees, development fees, consultants' fees, performance and material bonds, insurance, taxes and interest during construction, inspection and examination fees, title and recording, surveys, blueprints, test borings and inspections, plan checks and permits, financing fees, financing discounts and charges, legal and organizational expenses, costs of approvals of the Secretary of the Army and the Chief Engineer of the Commission, and all other costs and expenses incurred in the development and completion of improvements.

2. Leasing and Parcelization. Subject to the terms and conditions hereof, the Commission agrees to lease to the Tenant or an affiliate thereof, and the Tenant agrees to lease, or to cause



an affiliate of the Tenant to lease, from the Commission, the entire Project Area, and the Tenant agrees to develop the Project Area or to cause the same to be developed in accordance with the provisions of the Scope of Development attached hereto and marked "Exhibit D". The Tenant intends to develop the entire Project Area in accordance with the provisions hereof, in stages. For that purpose, the Tenant may determine the size, shape and boundaries of each Parcel; provided, however, that each Parcel shall contain a minimum of 25,000 square feet unless otherwise agreed by the parties hereto and the Parcel or Parcels leased at the time of execution of the first Lease shall not exceed 40% of the Project Area, in the aggregate, unless such Parcel or Parcels include the entire Project Area; and provided further that if any Parcel contains less than the entire area of a now existing Pier located in the Project Area, then the Commission and the Tenant contemporaneously shall execute two or more Leases covering Parcels which, in the aggregate, include such Pier in its entirety. A separate Lease shall be executed with respect to each Parcel, and Leases shall be executed so as to complete development of the Project Area in accordance with the Tentative Schedule of Development attached hereto and marked "Exhibit E". Not later than December 31, 1970, the Tenant shall specify in writing the real property to comprise the first Parcel, and thereafter the Tenant shall specify in writing the real property to comprise each additional Parcel, so as to give the Commission sufficient time to permit the Commission to give adequate notice to present users of the Parcel, but such notice of Tenant shall be given at least sixty (60) days and need not be given more than one hundred and twenty (120) days prior to the date for execution of a Lease thereon. Each such notice shall specify the date of execution and commencement of the term of the Lease. Prior to Tenant giving any such notice, the conditions set forth in subparagraphs (c), (e) and (f) of paragraph 24 either shall have been met or shall be waived by Tenant with respect to the Parcel covered by such notice. The Tenant agrees, at its cost and expense, to cause to be prepared by Larry Smith & Co., Inc. (or some other firm selected by the Tenant and approved by the Commission), a





feasibility report with respect to the utilization of the Project Area for the uses set forth in the Scope of Development (Exhibit D), and upon the terms and conditions herein and in Exhibit C provided, and to furnish a copy of such report to the Commission within 180 days after the date hereof.

3. Rental. The rental with respect to each Parcel shall be as follows:

(a) Minimum Rental. An annual minimum rental of \$400,000 for the Project Area has been negotiated based on a fair return on the market value of the Project Area. No minimum rental shall be payable upon or with respect to any portion of the Project Area to be used for public streets, sidewalks or other public purposes, or which is subject to the easement reserved to the Commission pursuant to numerical paragraph 9. Each Lease shall require the Tenant to pay to the Commission, the annual minimum rental specified therein in equal monthly installments payable in advance on the fifth day of each calendar month, commencing with the first full calendar month after completion of the improvements upon the Parcel leased under such Lease or after such improvements shall be occupied and operated for the purpose for which intended, whichever event occurs first (but in no event later than 24 months after the commencement of the term of such lease). The Leases executed at the time of leasing of the first Parcel shall provide for annual minimum rental of \$150,000, in the aggregate, unless such Leases shall include the entire Project Area, in which latter event the minimum rental under the Leases, in the aggregate, shall be \$400,000. The Leases thereafter executed, if any, shall provide for an annual minimum rental equal to that proportion of \$250,000 which the number of square feet of the underlying platform to be constructed upon that Parcel pursuant to such Lease (exclusive of any portion thereof to be used for public streets, sidewalks or other public purposes) bears to the total number of square feet of the underlying platform constructed and to be constructed on such other Parcels in the Project Area (exclusive of any portions thereof, to be used for





public streets, sidewalks or other public purposes). All minimum rental shall be credited against Percentage Rentals payable under such Lease, in the order of accrual, until credited in full for the initial five lease years of the term of such Lease. Commencing with the sixth lease year; there shall be no further credit for minimum rentals for the first five lease years. In the sixth and succeeding lease years, minimum rentals shall be credited against Percentage Rentals for the lease year for which the minimum rental is paid.

(b) Percentage Rentals. Each Lease shall require the Tenant to pay to the Commission Percentage Rentals for each lease year (i) after completion of the improvements upon the Parcel leased pursuant to such Lease, or (ii) after gross rental first becomes payable to Tenant with respect to that Parcel, or (iii) after any improvements constructed by the Tenant upon the Parcel shall have been occupied by the Tenant, whichever of (i), (ii) or (iii) first occurs, the Percentage Rentals for each of the following uses for which such Parcel then is being used or occupied to be that percentage of the gross rental received by the Tenant for the right to use property covered by that Lease for that use which is set forth opposite that use in the following table:

<u>Use</u>	<u>Percentage Rental For That Use</u>
Garage and Parking	6%
Hotel and Motor Hotel	3%
Office	3%
Residential	2%
Payments made by Utilities	7%
Retail and other Commercial Uses not Listed	5%

The phrases "hotel" and "motor hotel", wherever used herein, shall include all structures and improvements used for or in connection with the operation of a hotel or motor hotel, including but not limited to rooms and other living accommodations used primarily for transient guests, conventions, meetings and other uses normally associated with a hotel or motor hotel, restaurants, parking, gift shops, barber and beauty shops, drug stores and other commercial



uses and facilities, provided that the space devoted to the particular use is covered by the sublease or other management or occupancy arrangement between the Tenant and the operator of the hotel or motor hotel.

If, in any lease year, the adjusted gross rental for that lease year received by the Tenant for the the right to use property covered by the Lease shall exceed 16% of the total cost of development of such property, then 20% of that excess adjusted gross rental shall be paid to the Commission as additional rental within 60 days after the end of that lease year. The phrase "adjusted gross rental" with respect to any lease year shall mean gross rental (as defined in paragraph 1 (c)) for that lease year appropriately adjusted downward to that percentage of such gross rental which the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index (all items) San Francisco - Oakland, California (1959=100) (the "Price Index") as of the base date, being the date on which the Tenant files notice of completion of construction of the improvements upon the Parcel covered by the Lease, bears to said Price Index as of the last day of that lease year. The purpose of this adjustment is to preserve for the Tenant the benefit of any increases in gross rental resulting from increases in the cost of living or inflation. If the Price Index is no longer published, the parties shall use such index as is most nearly comparable to said Price Index as now published, and appropriate adjustments will be made if necessary. If the Price Index is not published for the date upon which Tenant files notice of completion as aforesaid, then the base date shall be the last date for which such Price Index is published next preceding the date upon which Tenant files notice of completion of construction of the improvements on the Parcel. If such Price Index is not published for the last day of any lease year, then the average of such Price Index for the entire lease year shall be used. The total cost of development with respect to each Parcel shall be furnished by the Tenant to the Commission as soon as finally determined, and the Commission may inspect at all reasonable times such books and records of Tenant as may be necessary for the Commission to verify that the total cost of development so furnished is accurate.



4. Possession. The Commission shall deliver possession of each Parcel to the Tenant upon the first day of the term of the Lease leasing that Parcel, with no occupants or persons in possession thereof, subject to mutual agreement by the parties otherwise. Notwithstanding the foregoing, the Tenant understands that a portion of the Project Area (the "Heliport") is leased pursuant to that certain World Trade Center Lease For Heliport, dated July 10, 1967, between San Francisco Port Authority and City and County of San Francisco (the "Heliport Lease"). If the Tenant shall lease land which includes the Heliport under a Lease having a term commencing prior to August 1, 1970, such Lease shall be subject to the Heliport Lease and all rights of the Commission thereunder shall be assigned to the Tenant, but if the leasing of the Heliport by Tenant shall commence after July 31, 1970, then possession thereof shall be delivered to the Tenant on the first day of the term free of the tenancy under the Heliport Lease unless and except to the extent that the Tenant shall have consented in writing to a renewal or extension of the Heliport Lease. The Commission shall not renew or extend the Heliport Lease without the prior written consent of the Tenant which consent shall not be unreasonably withheld, but no such renewal or extension shall be granted if the same would adversely affect Tenants development program, demolition, or construction or occupancy of new improvements.

5. Zoning. The Project Area is presently zoned District C-M and it is anticipated that it may be rezoned to District C-2. If any change in zoning of any Parcel shall be necessary in order to permit the construction of the improvements thereon in accordance with the provisions of this Development Agreement, the subleasing, use and occupancy for the purpose intended, and the operation, maintenance, repair and replacement of such improvements, the Commission shall co-operate with the Tenant in obtaining such rezoning prior to the commencement of the term of the Lease leasing that Parcel. Any application for zoning may be filed by the Tenant in the name of the Commission, or in the name of the Tenant, or in both names.

6. Form of Lease. Each Lease shall be in the form of Exhibit C, with appropriate insertions as to description of the Parcel covered thereby, the rental, the term, and the deposit, each of which insertions shall be made in conformity with the language and intent





of this Development Agreement. At the option of the Tenant, the tenant under any Lease may be an affiliate of the Tenant.

7. Term of Lease. Each Lease shall provide for the commencement of the term upon such date, not later than December 31, 1974, as the Tenant may specify, and for the term to end sixty-six (66) years after the commencement date of the term of the first Lease to be executed.

8. Title Insurance and Costs of Clearing Title. Any costs of clearing or perfecting title shall be borne by the Tenant, except that prior to the commencement of the term of any Lease the Commission shall revoke, cancel and terminate all existing utility, railroad and other licenses, easements and uses (except as otherwise provided in paragraph 4 with respect to the Heliport Lease) in that portion of the Project Area leased thereunder and shall cause all improvements made, used, owned or maintained by the holders of such licenses and easements to be removed therefrom without cost to the Tenant; provided, however, that the Tenant shall make reasonable arrangements with The Pacific Telephone & Telegraph Company for removal of its existing cables and facilities or Tenant, at its option, may design and construct Tenant's improvements so as not to disturb such cables and facilities. The Commission shall use its best efforts to assist Tenant in obtaining removal of the cables and facilities of The Pacific Telephone & Telegraph Company from the Project Area if the Tenant so desires. Any person to whom an easement or license is granted by Tenant on, in or underlying the platform or any other improvements of the Tenant for relocation of utilities shall pay a reasonable rental therefor to the Tenant. All premiums for policies of title insurance shall be paid by the Tenant. Any escrow fees or charges made by the Title Company shall be borne by the Tenant.

9. Condition of Title. The title to each portion of the Project Area shall be such that the Lease thereon shall be subject to no unrecorded or recorded liens, encumbrances, imperfections, covenants, conditions, restrictions, reservations, encroachments, assessments, easements, taxes, or any claims, rights, demands or interests of third parties of any kind, except for:

(a) rights of the State of California in subsurface mineral deposits, including oil and gas deposits, together with the right of ingress and egress on the Parcel for exploration, drilling and extraction of such mineral, oil and gas deposits; none of





which rights may be exercised so as to disturb or otherwise interfere with the leasehold estate of Tenant; (b) general taxes for the year in which the Lease on such Parcel is executed, and subsequent year; (c) the possibility of reversion to the State of California pursuant to Section 22 of the Statutes of 1968, Chapter 1333, subject to such Lease, this Development Agreement, and all other lawful obligations related to such Parcel or portion of the Project Area; (d) the reservation by the California Legislature of the right to amend, modify or revoke, in whole or in part, the transfer of lands in trust provided for by the Statutes of 1968, Chapter 1333, with the State thereupon assuming all of the Commission's obligations under this Development Agreement and such Lease and all other lawful obligations related to such Parcel or portion of the Project Area; (e) easements, if any, to be provided by Tenant for relocation of utility lines in the Project Area; (f) the Heliport Lease referred to in paragraph 4 hereof if the term of a Lease leasing the Heliport to the Tenant shall commence prior to August 1, 1970, or prior to the date of expiration of any renewal or extension of the Heliport Lease made with the written consent of Tenant; and (g) reservation to the Commission, under the Lease, in the Project Area of an easement for navigation and communication purposes over and across the water fifty (50) feet or more outside the outer perimeter of the platform to be constructed in the Project Area, which easement shall not include mooring or storage of vessels or improvements above the surface of the water other than warning buoys or similar safety devices. The Commission agrees to cooperate with and assist the Tenant in any suit, action or proceedings



which the Tenant may deem necessary to quiet the title of, or to perfect title in, any portion of the Project Area, and any such suit, action or proceeding may be brought in the name of the Commission, or in the name of the Tenant, or in both. The Tenant shall pay all costs and expenses, including attorneys' fees, incurred in or by virtue of any such suit, action or proceeding which the adverse party is not required to pay by a judgment or order of the court.

10. Acts of Other Governmental Bodies. In the event that the Commission is precluded or otherwise unable to deliver a Lease to and possession of any Parcel, or any portion of the Project Area, by act of Congress; executive order; order, decision or judgment of any court; or act of any governmental body, then at the option of the Tenant this Development Agreement may be terminated in its entirety, except that if Leases theretofore have been executed on one or more Parcels, then this Development Agreement may be cancelled only with respect to the Parcel or Parcels, or portion of the Project Area, which have not yet been leased to the Tenant, such cancellation to be at the option of the Tenant. Nothing contained herein shall excuse the Commission for failure to deliver a Lease or possession of any portion of the Project Area if such failure results from its voluntary act.

11. Time for Execution and Delivery of Leases. The Tenant shall make requests in accordance with paragraph 2 hereof, and the Commission and the Tenant agree to execute, acknowledge and deliver Leases so as to conform to the Tentative Schedule of Development (Exhibit E) unless and except to the extent the parties hereto may mutually agree otherwise, and except as excused by other provisions hereof.

12. Compliance with Conditions. The Commission and the



Tenant agree, unless excused pursuant to other provisions hereof, to perform all acts necessary to the execution of each Lease in sufficient time to permit execution thereof in accordance with the provisions of this Development Agreement.

13. Place of Delivery of Leases. The Tenant's executed copy of the Lease on each Parcel shall be delivered to it at the then principal office of the Title Insurance and Trust Company in San Francisco, California.

14. Taxes. The Tenant shall have no obligation to pay any real estate or other taxes and assessments levied, assessed or imposed upon the Project Area, or any portion thereof, prior to the commencement of the term of a separate Lease upon that portion of the Project Area, and possession of each portion of the Project Area which is leased under a separate Lease shall be delivered to the Tenant free and clear of all real estate and other taxes and assessments levied, assessed or imposed upon that portion of the Project Area prior to, or assessed for any period ending before, the commencement of the term of the Lease leasing the same.

15. Short Form. At the request of Tenant, made prior to the expiration of sixty (60) days after the date of any Lease, a short form of that Lease shall be executed and acknowledged in a manner suitable for recording and such short form, in such event, shall be recorded instead of such Lease.

16. Deposits. The Tenant shall, simultaneously with the execution of each Lease, deliver to the Commission a good faith deposit in an amount equal to Four Thousand Three Hundred Fifty-Six Dollars (\$4,356.00) per acre, or a pro rata portion thereof for each fraction of an acre, of the submerged and filled lands leased under such Lease, as security for the faithful performance by the Tenant of all of the terms, covenants and conditions of the Lease. The good faith deposit, at the option of the Tenant, may be in the form of (a) cash; (b) a surety bond or bonds payable to the Commission, and issued by a company, as surety, licensed as such under the insurance code of the State of California, each such surety bond to be





in a form reasonably acceptable to the Commission; (c) negotiable notes or bonds issued by the Federal Government or any of its instrumentalities, upon the basis of their fair market value; (d) negotiable certificates of deposit issued by a Federal or a State bank engaged in business in California; or (e) any combination of such cash, surety bond, notes, bonds, and certificates of deposit. Such deposits shall be held upon the terms and conditions set forth in Exhibit C hereto. The form of the deposit with respect to any Lease may be changed from time to time.

The deposit, if cash or a check, shall be deposited in an account of the Commission in a bank or trust company selected by it.

The Commission shall not be under any obligation to pay or earn interest on the deposit, but if interest shall accrue or be payable thereon, such interest shall be the property of the Tenant and promptly shall be paid to the Tenant when received by the Commission, except that interest earned on any cash deposit may be retained by the Commission.

17. Tentative Schedule of Development. The construction of improvements upon the Project Area shall be commenced so that the minimum improvements to be completed at each of the scheduled dates set forth on the Tentative Schedule of Development which is attached hereto as Exhibit E shall be completed on that date, except as such scheduled dates may be extended by mutual agreement of the Commission and the Tenant or as the completion of such construction may be excused by other provisions hereof.

18. Notices and Demands. A notice, demand or other communication under this Development Agreement or any Lease by either party to the other shall be sufficiently given or delivered if it is deposited by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) in the case of the Tenant, is addressed to or delivered personally to the Tenant, care of Oceanic Properties, Inc., 1 California Street, San Francisco, California 94111; and

(b) in the case of the Commission, is addressed or





delivered personally to the Commission at the Ferry Building,  
San Francisco, California,

or at such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

19. Entire Agreement. This Development Agreement integrates all of the terms and conditions mentioned herein, and supersedes all negotiations and previous agreements between the parties with respect to the subject matter hereof.

20. Effect of Defaults. No default of the Tenant with respect to one or more Leases, or one or more Parcels, shall impair or affect any of the respective rights, duties, liabilities and obligations of the parties hereunder with respect to any Lease theretofore executed, or any Parcel leased thereunder, concerning which no default has occurred.

The injured party shall give written notice of any default or alleged default under this Development Agreement to the other party, specifying the default complained of. The other party thereafter shall have sixty (60) days (or such longer period as reasonably may be required therefor) in which to remedy such default, and the injured party may not institute a suit or other proceedings against the party in default until sixty (60) days (or until the end of such longer period as is reasonable) after giving such notice.

21. Estoppel Certificates. The Commission, at any time and from time to time, upon written request of the Tenant, shall furnish to the Tenant a written statement specifying: the starting and termination date of any Lease; whether or not the Tenant is then in default hereunder or under such Lease and, if so, the nature of any such default; the date to which rental has been paid; whether there are any offsets against rents; and whether such Lease is complete and the only Lease between the Commission and the Tenant on the Parcel covered. Any third party may rely upon any such written statement.

22. Access. The Commission at all times shall provide the



Tenant with direct access from the Embarcadero to all portions of the Project Area which shall be leased under a Lease pursuant to the provisions hereof, which access shall be reasonably adequate for purposes of the planning and development of the Project Area and the realization by Tenant of maximum income therefrom. Prior to the creation of a leasehold interest in or to any portion of the Project Area, the Tenant may enter upon the Project Area for purposes of soils testing and surveying, except that the Tenant shall not unreasonably interfere with existing tenancies in the Project Area.

23. Amendment of Statute. Unless previously so amended, the Commission agrees forthwith to use its best efforts to obtain an amendment to Chapter 1333 of the Statutes of 1968 of the State of California so that upon any reversion of any portion of the Project Area to the State of California, or any amendment, revocation or modification of said Chapter 1333, the State of California shall receive such portion of the Project Area subject to, and shall assume all of the obligations of the Commission under, this Development Agreement, any lease on such portion of the Project Area, and all other lawful obligations related to such portion of the Project Area.

24. Conditions to Tenant's Obligations. In the event that with respect to all, or any Parcel or portion, of the Project Area:

(a) The Commission fails to execute a Lease on such Parcel or portion of the Project Area, in the form and substance and at the time herein provided, and such failure shall not be cured within sixty (60) days after written demand by the Tenant; or

(b) The Tenant shall be unable, after using due diligence for a period of ninety (90) days or more, to obtain mortgage financing for the acquisition of, and completion of improvements upon, such Parcel or portion of the Project Area, in an amount equal to at least 80% of the total cost of development of such Parcel or portion of the Project Area and otherwise on a basis and on terms that generally would be considered satisfactory at that time by builders and contractors for improvements



of the nature and type proposed to be constructed upon that portion of the Project Area; or

(c) The Tenant shall have obtained a feasibility report prepared by Larry Smith & Co., Inc. (or some other firm selected by the Tenant and approved by the Commission), with respect to the utilization of such Parcel or portion of the Project Area for the uses permitted by, and upon the terms and conditions provided for in, this Development Agreement; and such feasibility report shall indicate that the rental demand for improvements of the type, nature and character proposed to be constructed upon such Parcel or portion of the Project Area, at the rentals reasonably required therefor, is inadequate to justify the construction of such improvements for investment purposes; or

(d) The permits, approvals, waivers or variances required with respect to any portion of the improvements to be made by the Tenant, upon, or in connection with the development of, all, or such Parcel or portion, of the Project Area, to be obtained from the Department of City Planning, the San Francisco Bay Conservation and Development Commission, the Board of Permit Appeals, or any other governmental legislative authority, or agency, department, commission, board or officer having jurisdiction, shall not have been granted or given, or having been granted or given shall have been revoked or shall have expired or been declared invalid, prior to the date for leasing of the affected property by the Tenant pursuant hereto; or

(e) The Title Insurance and Trust Company, San Francisco, California, or some other title insurance company satisfactory both to the Commission and to the Tenant (the "Title Company") shall fail or refuse to issue, within thirty (30) days after Tenant shall make application therefor, a commitment to the Tenant to provide and deliver to the Tenant, upon the recording of any Lease, an American Land Title Association Leasehold Policy Standard Coverage Form B of title insurance issued by the Title Company insuring the condition of the title to





the Parcel leased pursuant to that Lease, as specified in paragraph 9 of this Development Agreement, which title insurance policy shall be in an amount equal to 14.2857 times the monthly minimum rental specified in the Lease with respect to which it is issued, together with an appropriate endorsement or other commitment of the Title Company, in form satisfactory to the Tenant, to insure the amount of the Tenant's estimated total cost of development with respect to the Parcel covered by such policy, or, as an alternative, at the option of the Tenant, a commitment to issue the policy of title insurance in an amount to cover all or a portion of the estimated total cost of development of the Parcel insured thereby; or

(f) Improvements of the same type and nature to be constructed upon such Parcel or portion of the Project Area shall have been substantially completed upon another Parcel and available for occupancy but:

(1) in the case of an office building or residential use, less than 80% of the net square feet contained therein shall have been leased or rented; or

(2) in the case of a hotel or motor hotel, the average room occupancy shall have been less than 75% for any period of six (6) months or more; or the average room occupancy of guest rooms of all first class hotels located in San Francisco, California, as determined by Harris, Kerr, Forster & Co., or other independent public accountants experienced in the hotel industry, or as shown in any hotel manual publishing such data, shall have been less than 75% for any period of six (6) months or more in the preceding two (2) calendar years; or

(3) in the case of any other improvements, the Tenant shall have realized less than 80% of the gross effective income which, at rental rates then being demanded therefor, would be realized from the substantially completed improvements upon such other Parcel; or





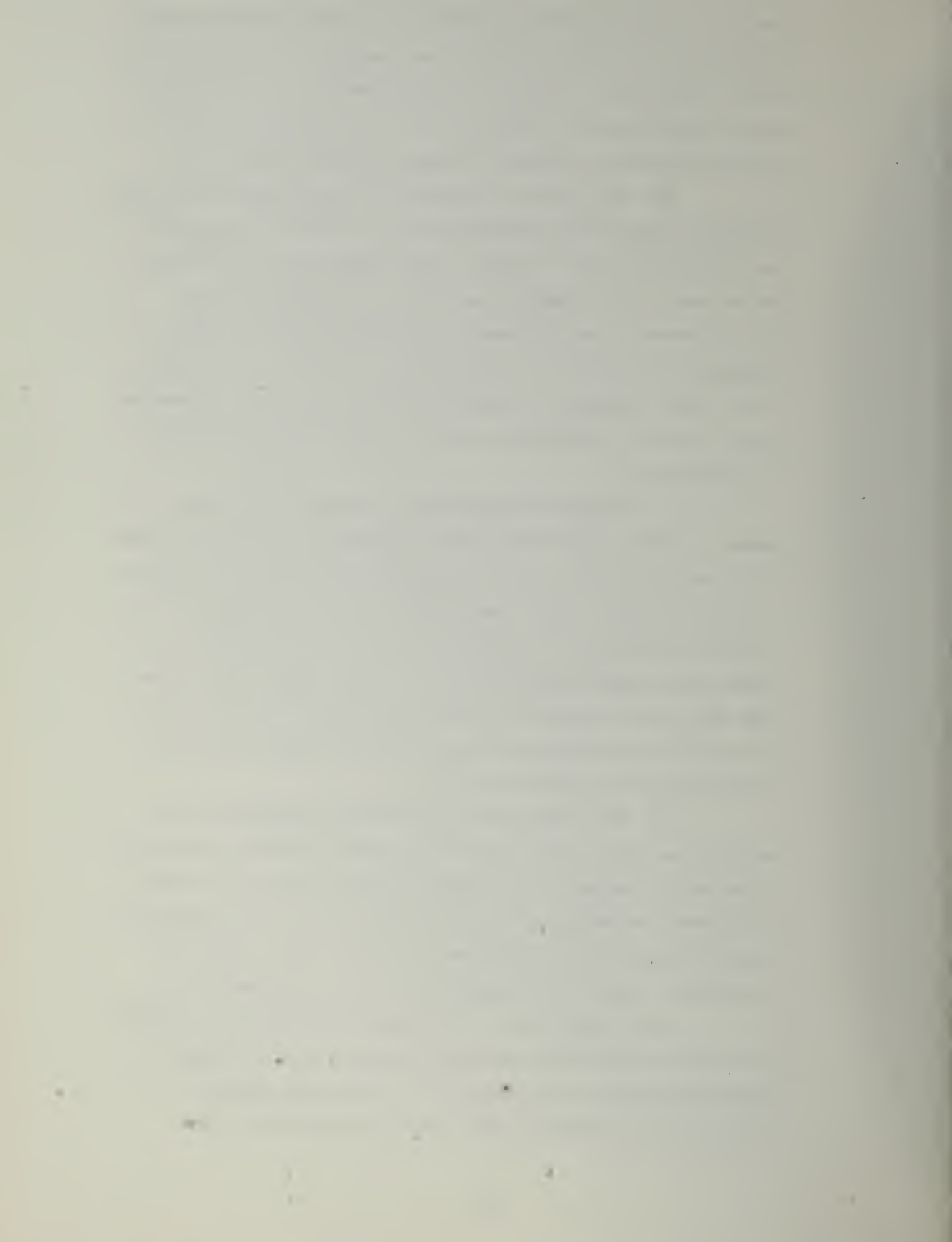
(g) The Tenant shall be unable, after using due diligence for a period of ninety (90) days or more, to obtain equity financing for the acquisition of, and completion of improvements upon, such Parcel or portion of the Project Area, in an amount equal to the excess of the total cost of development thereof over the amount of mortgage financing obtained therefor; or

(h) The plans for bulkheading and filling and for permanent pile-supported structures upon such Parcel or portion of the Project Area shall not have been approved by the Secretary of the Army, acting through the Chief of Engineers, within six (6) months after the submission of such plans, it being understood and agreed that the Tenant, on behalf of the Commission, shall reimburse the Federal Government for any engineering costs incurred in connection with any such approval or failure to approve; or

(i) There shall be adopted or promulgated by any agency or other unit of the State of California or City and County of San Francisco or any other governmental body having jurisdiction, any laws, rules, regulations, or executive order, or if the order, decision or judgment of any court is rendered or entered, which would prohibit or would render economically unfeasible the use or occupancy of the Project Area or any part thereof, or of any improvements thereon, for the purposes and upon the terms herein contemplated; or

(j) The zoning upon such Parcel or portion of the Project Area shall not be such as to permit construction of the improvements thereon in accordance with the provisions of this Development Agreement, and the subleasing, use, and occupancy of the improvements for the purpose intended, and the operation, maintenance, repair and replacement of such improvements; or

(k) Chapter 1333 of the Statutes of 1968 of the State of California shall not have been amended by the California Legislature prior to the close of the 1968-69 Legislative Session, so as to provide that upon any reversion of such



portion of the Project Area to the State of California, or any amendment, revocation or modification of said Chapter 1333, the State of California shall receive said portion of the Project Area subject to, and shall assume all of the obligations of the Commission under, this Development Agreement, any Lease on such portion of the Project Area, and all other lawful obligations related to such portion of the Project Area; then and in any of such events the Tenant may cancel this Development Agreement as to all of the Project Area upon which a Lease has not been executed pursuant hereto, or as to such Parcel or portion, of the Project Area, by giving the Commission written notice of such cancellation. If this Development Agreement is so cancelled, neither party shall have any further rights or liabilities hereunder with respect to the Parcels or portions of the Project Area with respect to which it is so cancelled, but this Development Agreement shall remain in full force and effect with respect to Parcels already leased to the Tenant and any other portions of the Project Area not specified in such notice of cancellation.

25. - Demolition. The existing improvements upon each Parcel leased to the Tenant shall be demolished by the Tenant at its cost and expense. All demolition plans and the methods thereof shall be subject to the prior approval of the Chief Engineer of the Commission, which approval shall not be unreasonably withheld. Any relocation of sewer or utility lines in any Parcel shall be accomplished without cost or expense to the Commission.

26. Agreement Not Merged in Leases. The provisions of this Development Agreement are not intended to, nor shall they, be merged by reason of any Lease, and no Lease shall be deemed to affect or impair the provisions and covenants of this Development Agreement.

27. Force Majeure. Performance by the Tenant shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, labor difficulties, riots, floods, earthquakes, fires or other casualty, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes,





lack of transportation, government restrictions or priorities, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the Commission, acts or omissions of the City or County of San Francisco, California, or any other public or governmental agency, bureau, department or officer, or any cause not specified above which is determined by the Commission to be beyond the reasonable control of the Tenant. The Tenant shall be entitled to an extension of time for any such cause which extension shall commence to run from the time of commencement of the cause if the Tenant gives notice to the Commission claiming such extension within 30 days after commencement of the cause.

28. Law Governing. The laws of the State of California shall govern the interpretation and enforcement of this Development Agreement.

29. Remedies. In addition to any other rights or remedies provided in law and equity, both the Commission and the Tenant shall be entitled to specific performance of this Development Agreement or any provision hereof.

30. Assignment. This Development Agreement shall not be assigned without the prior written consent of the Commission, which consent shall not be unreasonably withheld. This provision shall not limit, affect or modify the provisions hereof with respect to the tenant under any Lease being an affiliate of the Tenant, or the provisions of any Lease concerning assignment and subletting with respect to the Lease or a Parcel leased thereunder.

31. Mortgage or Deed of Trust Holder. The holder of any mortgage or deed of trust creating a lien upon any Parcel or portion of the Project Area, or a leasehold interest therein, or the improvements therein, shall not be obligated by the provisions of this Development Agreement to construct or complete the improvements upon any Parcel or portion of the Project Area, or to guarantee such construction or completion.

32. Restrictions upon Other Property. The Commission agrees that it will not, without the Tenant's prior written consent, within





five (5) years after the date of this Development Agreement, lease any other property under the jurisdiction and control of the Commission and located within five hundred feet (500') of any boundary of the Project Area for the purpose of constructing and operating any hotel, motor hotel, office building or multi-family residential use.

33. Waivers and Amendments. All waivers of the provisions of this Development Agreement, and all amendments hereto, must be in writing signed by both parties hereto in the case of an amendment and by the party waiving a provision in the case of a waiver.

34. Governmental Approvals. The Commission agrees to cooperate with the Tenant, and to use due diligence to assist it, in obtaining the permits, approvals, waivers and variances required with respect to any portion of the improvements to be made by the Tenant upon, or in connection with the development of, any Parcel or portion of the Project Area from the Department of City Planning, the San Francisco Bay Conservation and Development Commission, the Art Commission, the Board of Permit Appeals, or any other governmental legislative authority, or agency, department, commission, board or officer having jurisdiction.

35. No Partnership Created. Notwithstanding the provisions contained herein or in any Lease for the payment of Percentage Rentals, or any other provision herein or in any Lease contained, it is expressly understood and agreed that the Commission shall not be construed or held to be a partner of the Tenant and that the relationship between the parties is and at all times shall be that of lessor and lessee.

36. Right of Refusal. In the event that any of the submerged and filled lands bounded on the North by the extreme Northerly line of Pier No. 9 and said line prolonged Easterly; bounded on the West by the City of San Francisco Eastern line of the sidewalk along and abutting the Eastern curb line of the Embarcadero; bounded on the South by the North line of the Project Area, and bounded on the East by the Easterly Pier Head Line, shall be made available for development, the same shall be offered to the Tenant in writing at the best rental and upon the most favorable other terms and condi-



tions that the Commission is willing to lease the same to another or others unless and except to the extent that bids are to be received for the leasing of such lands. The Tenant shall have ninety (90) days after receipt of any such written offer in which to accept or reject the same. If the Tenant does not accept any such offer, then the Commission may lease such property to another or others at any time within six (6) months after the end of the ninety-day period in which the Tenant could accept or reject the lease thereon, upon the same rental and other terms and conditions offered to the Tenant. If, in any such case, a bona fide lease is not executed within such six-month period, then the property shall be reoffered to the Tenant before being leased to another or others. If bids are to be received for the leasing of any of the above-described submerged and filled lands, then the Tenant shall be given notice in writing by the Commission of that fact at least ten (10) days prior to the publication or other dissemination of any notice of leasing, and the Tenant shall be accorded a reasonable opportunity, and in no event less than ten (10) days after the date for receipt of bids, in which to meet the highest and best bid for each such lease, unless and except to the extent then prohibited by law. If the Tenant shall agree to meet the highest and best bid, the lease in any such case shall be awarded to the Tenant unless prohibited by law.

37. Assurance of Performance. The Tenant, within ninety (90) days after the execution hereof and prior to giving any notice provided for in numerical paragraph 2, will deliver to the Commission a surety bond in the penal sum of \$250,000, naming the Commission as obligee, and executed by the Tenant, as principal and a company, as surety, licensed as such under the insurance code of the State of California. Such surety bond shall be maintained in effect until a Lease or Leases shall have been executed covering the entire Project Area, or until the earlier cancellation of this Development Agreement pursuant to any provision hereof. Such surety bond shall provide that if the Tenant shall well and truly perform all of the undertakings, covenants, terms and agreements herein contained, and shall fully indemnify and save harmless the Commission from all cost and damage which it may suffer by reason of the Tenant's failure to do so, then the obligation of





the surety bond shall be void, otherwise to remain in full force and effect. If the Tenant shall be in default in the performance of this Development Agreement with respect to a particular Parcel or Parcels, and the Commission shall not have committed a material breach of this Development Agreement with respect to such Parcel or Parcels, then the Commission shall be entitled forthwith to recover under said Surety Bond. In no event shall the Tenant be liable for any damages for any breach hereof, or otherwise under this Development Agreement, in excess of the penalty amount of said surety bond, in the aggregate, but this provision shall not limit or affect the provisions of numerical paragraph 29 hereof providing for specific performance insofar as Parcels then covered by a Lease are concerned. Said Surety Bond shall be maintained in full force and effect until the execution of a Lease or Leases covering the entire Project Area, or until the earlier termination of this Development Agreement; provided, however, that no such termination shall relieve the Tenant or the surety for liability to the Commission by reason of a breach occurring at or prior to the time of termination.

IN WITNESS WHEREOF, the Commission and the Tenant have executed this Development Agreement on the day and year first above written.

SAN FRANCISCO PORT COMMISSION

ATTEST:

John D. Yeomans  
Secretary

By

[Signature]  
Port Director

WATERFRONT DEVELOPMENT CO., a  
Joint Venture

By OCEANIC BAY COMPANY, INC.

By

(Title) Vice President

ATTEST:

[Signature]  
Secretary

By KIPCO, INC.

By

(Title) Vice President

ATTEST:

Robert A. Krantz, Jr.  
Secretary



By resolution adopted by the San Francisco Port Commission this 3rd day of September, 1969, by the following vote:

Ayes: Mr. Magnin, Mr. Rudden, Mr. Husbands, Mr. Roberts

Noes: 0

Absent: Mr. Weinberger, Mr. Coke

Abstaining: Mr. London

the San Francisco Port Commission approved the aforesaid Development Agreement and authorized the Port Director to execute said Development Agreement on behalf of the Port.

John D. Yeomans  
John D. Yeomans, Assistant Secretary  
San Francisco Port Commission

STATE OF California )  
COUNTY OF San Francisco ) SS:

On this 13<sup>th</sup> day of November, in the year 1969, before me, Margaret B. Leahy, a Notary Public of said State, duly commissioned and sworn, personally appeared Rae G. Hake, known to me to be the Port Director of SAN FRANCISCO PORT COMMISSION, that executed the within instrument, and acknowledged to me that such SAN FRANCISCO PORT COMMISSION executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Margaret B. Leahy  
Notary Public in and for said State

My Commission Expires:

SEP 22 1971





STATE OF HAWAII )  
 ) ss:  
COUNTY OF HONOLULU )

On this 25th day of September, in the year  
19 69, before me Tomoe Komata, a Notary Public of said  
State, duly commissioned and sworn, personally appeared  
Wm. CURLETT, known to me to be the VICE President  
of OCEANIC BAY COMPANY, INC., a corporation, and acknowledged to  
me that such corporation executed the within instrument for and on  
behalf of WATERFRONT DEVELOPMENT CO., a Joint Venture.

IN WITNESS WHEREOF, I have hereunto set my hand and af-  
fixed my official seal the day and year in this certificate first  
above written.

Tomoe Komata  
Notary Public in and for said State  
of Hawaii, First Circuit Court

My Commission Expires:

July 15, 1970

STATE OF New York )  
 ) ss:  
COUNTY OF New York )

On this 11<sup>th</sup> day of November, in the year  
19 69, before me Israel D. Grimes, a Notary Public of  
said State, duly commissioned and sworn, personally appeared  
William R. Loved, known to me to be the Vice  
President of KIPCO, INC., a corporation, and acknowledged to me  
that such corporation executed the within instrument for and on  
behalf of WATERFRONT DEVELOPMENT CO., a Joint Venture.

IN WITNESS WHEREOF, I have hereunto set my hand and af-  
fixed my official seal the day and year in this certificate first  
above written.

Israel D. Grimes  
Notary Public in and for said State

My Commission Expires:

March 30, 1970



EXHIBIT A

Property Description

All of the following described property being and situate in the City of San Francisco, County of San Francisco, and State of California, to-wit:

Beginning at a point on the Eastern line of the sidewalk along and abutting the Eastern curb line of the Embarcadero, as said sidewalk and said curb line existed on January 1, 1969, said point being 115 feet South of the Southerly line of Pier No. 9, as said Pier existed on January 1, 1969; thence Easterly at a right angle to said curb line for a distance of 45 feet, more or less, to a point on the Waterfront line, said Waterfront line being parallel with said Eastern curb line of the Embarcadero, which point is 115 feet South of the Southerly line of said Pier No. 9, as said Pier existed on January 1, 1969; thence along a line having an angle of 60°, measured from said Waterfront line, a distance of 170 feet to a point on a line parallel with, and 200 feet South of, the Southerly line of said Pier No. 9, as said Pier existed on January 1, 1969, and said line prolonged Easterly to the Pier Head Line, as the Pier Head Line existed on January 1, 1969; thence Southerly along said Pier Head Line to a point on a line parallel with and 225 feet South of the Southerly line of Pier No. 1, as said Pier existed on January 1, 1969; thence Westerly along said line (which line is parallel with and 225 feet South of the Southerly line of said Pier No. 1) to its point of intersection with the Eastern line of the sidewalk along and abutting the Eastern curb line of the Embarcadero, as said sidewalk and said curb line existed on January 1, 1969; thence Northerly along the Eastern line of said sidewalk, as the same existed on January 1, 1969, to the point of beginning.

The Tenant, at its expense, shall obtain a survey of the Project Area from a licensed land surveyor and, after completion of such survey, the property description set forth above shall be appropriately modified to conform to such survey.



FERRYPORT PLAZA

OCEANIC PROPERTIES

KIDDER - PEABODY REALTY

SKIDMORE, OWINGS, & MERRILL

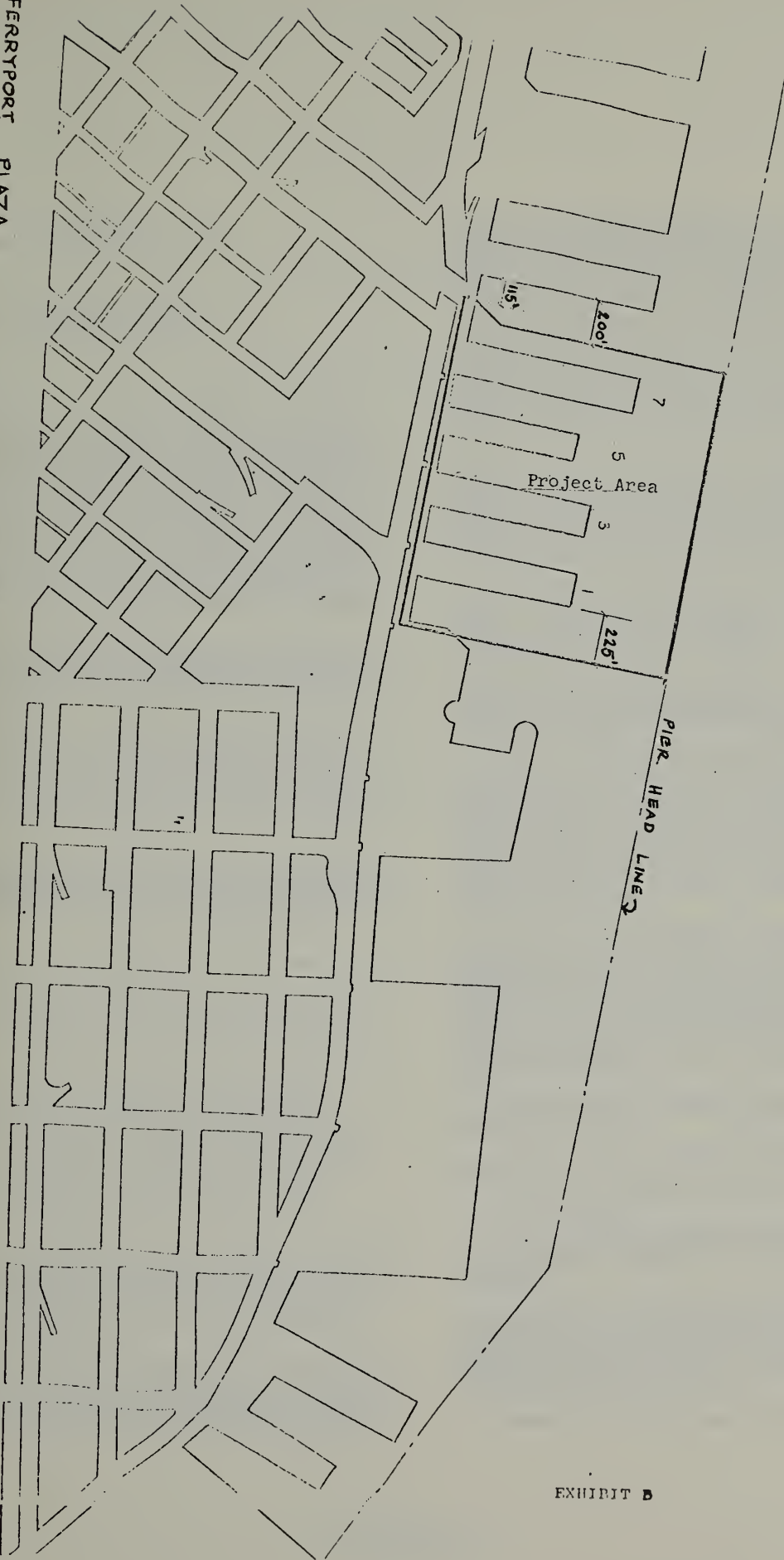


EXHIBIT B







ADDENDUM TO ALL  
CITY AND COUNTY OF SAN FRANCISCO CONTRACTS

NONDISCRIMINATION PROVISIONS  
OF Sec. 12B.2, as amended by Ordinance No. 340-68;  
(Chap. 12B, S.F. Admin. Code)

In the performance of this contract, the contractor, subcontractor or supplier agrees as follows:

(a) Wherever the work is performed or supplies are manufactured in the United States, the contractor, subcontractor or supplier will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, or national origin. The contractor, subcontractor or supplier will take affirmative action to insure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, ancestry or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this ordinance shall require or prohibit the establishment of new classifications of employees in any given craft. The contractor, subcontractor or supplier agrees to post in conspicuous places, available to employees and applicants or employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this section.

(b) The contractor, subcontractor or supplier will, in all solicitations or advertisements for employees placed by or on his behalf state that qualified applicants will receive consideration for employment without regard to race, creed, color or national origin. Any solicitations or advertisements that satisfy similar requirements under Federal law, subject to the approval of the awarding authority, will also satisfy this requirement.

(c) The contractor, subcontractor or supplier will send to each Labor Union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's, subcontractor's or supplier's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor, subcontractor or supplier will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the awarding authority, the Fair Employment Practices Commission, or the San Francisco Human Rights Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this contract, and on request provide evidence that he has or will comply with the nondiscrimination provisions of this contract.

(e) That contractor, subcontractor or supplier shall be deemed to have breached the nondiscrimination provisions of this contract upon:

(1) A finding by the Director of the San Francisco Human Rights Commission, or such other official who may be designated by the Human Rights Commission, that contractor, subcontractor or supplier has wilfully violated such nondiscrimination provisions; or

(2) A finding by the Fair Employment Practices Commission of the State of California that contractor, subcontractor or supplier has violated any provision of the Fair Employment Practices Act of California or the nondiscrimination provisions of this contract; provided that the Fair Employment Practices Commission has issued a final order pursuant to Section 1426 of the Labor Code, or has obtained a final injunction pursuant to Section 1429 of the Labor Code; provided further, that for the purposes of this provision, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of the Court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, or the Fair Employment Practices Commission, the awarding authority shall notify contractor, subcontractor, or supplier that unless he demonstrates to the satisfaction of the Director of the San Francisco Human Rights Commission, or other official designated by the Human Rights Commission, within such reasonable period as the Human Rights Commission shall determine, that the violation has been corrected, action will be taken as set forth in subparagraphs (f) and (g) hereof.

(4) The Human Rights Commission shall, within ten days of the date of issuance of any finding by the Director of the Human Rights Commission or other official designated by the Commission in the enforcement of this chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of his right to appeal. Notice of appeal must be filed in writing with the Chairman of the Commission within 20 days of the date of mailing said copy and notice.

(5) For purposes of appeal proceedings, under this section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Human Rights Commission be designated under Sec. 12B.2(e)(1) of this contract, that Commissioner may not participate in an appeal under this section except as a witness.

(6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his testimony, or books, records, documents or other things under his control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his presence at the proceeding, and requiring him to bring such books, records, documents or other things under his control.

(7) All appeals to the Human Rights Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director of the Human Rights Commission, or other official designated by the Human Rights Commission, and to the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to this contract.

(8) If any contractor, subcontractor or supplier under contract to the City and County of San Francisco shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for cancellation of the contract or subcontract and such contractor, subcontractor or supplier shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(9) The Human Rights Commission of San Francisco shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this contract, and such rules and regulations shall, so far as practicable, be similar to those adopted in applicable Federal executive orders.

(f) There may be deducted from the amount payable to the contractor, subcontractor or supplier by the City and County of San Francisco under this contract a penalty of ten (10) dollars for each person for each calendar day during which such person was discriminated against in violation of the provisions of this contract. In addition to any other penalties herein provided for the violation of the nondiscrimination provisions of this contract or for the failure of any contractor, subcontractor or supplier to abide by the rules and regulations herein contained, this contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding as set forth in Sec. 12B.2(e) that the contractor, subcontractor or supplier has discriminated contrary to the provisions of this contract, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City and County of San Francisco.

(g) A breach of the nondiscrimination provisions in the performance of this contract shall be deemed by the City and County of San Francisco to be a material breach of contract and basis for determination by the officer, board or awarding authority responsible for the awarding or letting of such contract that the contractor, subcontractor or supplier is an irresponsible bidder as to all future contracts for which such contractor, subcontractor or supplier may submit bids. Such person, firm or corporation shall not for a period of two (2) years thereafter, or until he shall establish and carry out a program in conformity with the nondiscrimination provisions of this contract, be allowed to act as a contractor, subcontractor or supplier under any contract for public works, goods or services for or on behalf of the City and County of San Francisco.

(h) Nothing contained in this contract shall be construed in any manner so as to prevent the City and County of San Francisco from pursuing any other remedies that may be available at law.

(i) Nothing contained in this contract shall be construed in any manner so as to require or permit the hiring of aliens on public works as prohibited by law.

(j) The contractor, subcontractor or supplier will meet the following standards for affirmative compliance:

(1) If the contractor, subcontractor or supplier has been held to be an irresponsible bidder under Section 12B.2(g) hereof, he shall furnish evidence that he has established and is carrying out a program in conformity with the nondiscrimination provisions of this contract.

(2) The contractor, subcontractor or supplier may be required to file with the Human Rights Commission a basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Wilful false statements made in such reports shall be punishable as provided by law. No contractor, subcontractor or supplier shall be held in nonconformance for not filing such a report with the Human Rights Commission unless he has been specifically required to do so in writing by the Human Rights Commission.

(3) Personally, or through his representatives, the contractor, subcontractor or





supplier shall, through negotiations with the unions with whom he has collective bargaining or other agreements requiring him to obtain or clear his employees through the union, or when he otherwise uses a union as an employment resource, attempt to develop an agreement which will:

- (a) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training.
- (b) Otherwise implement an affirmative anti-discrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.
- (4) The contractor, subcontractor, supplier or trade association shall notify the contracting agency of opposition to the nondiscrimination provisions of this contract by individuals, firms or organizations during the term of this contract.

Sec. 12B.4. In order to be eligible to bid or to have a bid considered by the awarding agency, the contractor in all public works contracts shall submit an affirmative action program which shall meet the requirements of the Human Rights Commission. For the purpose of this ordinance, the following definitions shall apply to the following terms:

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who submits a bid and/or enters into a contract with department heads and officers empowered by law to enter into contracts on the part of the City and County for public works or improvements to be performed, or for goods, supplies or services to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a contract or agreement with the contractor to perform a substantial specified portion of the contract for public works, improvements, supplies, goods or service let or awarded for or on behalf of the City and County in accordance with the plans and specifications of such contract. Such term shall also include any contractor who enters into a contract with any subcontractor for the performance of 10 per cent or more of the subcontract.

"Supplier" means any person or persons, firm, partnership, corporation, or any combination thereof, who submits a bid or enters into a contract with the awarding agency of the City and County for the supplying of goods, materials, equipment, furnishings or supplies.

The Human Rights Commission may also require contractors, subcontractors and suppliers to take part in a prebid or preaward conference in order to develop, improve or implement a qualifying affirmative action program.

(a) Affirmative action nondiscrimination programs developed pursuant to this section shall be effective for a period of twelve months next succeeding the date of approval by the Human Rights Commission. Contractors, subcontractors and suppliers who are members in good standing of a trade association which has negotiated an affirmative action nondiscrimination program with the Human Rights Commission may make this association program their commitment for the specific contract upon approval of the Human Rights Commission without the process of a separate prebid or preaward conference. Such an association agreement shall be effective for a period of twelve months next succeeding the date of approval by the Human Rights Commission.

Trade associations shall provide the Human Rights Commission with a list of members in good standing in such association. The Human Rights Commission shall annually supply contracting agencies of the City and County with a list of contractors, subcontractors and suppliers who have developed approved affirmative action nondiscrimination programs.

(b) The awarding agency shall be responsible for notifying all prospective bidders of the requirements of this section and also when requested by Human Rights Commission, for notifying the Human Rights Commission of each contract which is being proposed to be put to public bid.

(c) The proposed affirmative action program required to be submitted under Sec. 12B.4 hereof, and the prebid or preaward conference which may be required by Human Rights Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

- (1) Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;
- (2) Classroom preparation for the job when not apprenticeable;
- (3) Preapprenticeship education and preparation;
- (4) Upgrading training and opportunities;
- (5) Encouraging the use of contractors, subcontractors and suppliers of all ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City and County of San Francisco for such work; and
- (6) The entry of qualified minority journeymen into the industry.

(d) Affirmative action nondiscrimination agreements resulting from the proposed affirmative action programs or the prebid or preaward conferences shall not be confidential and may be publicized by the Human Rights Commission at its discretion. In addition, the Human Rights Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this ordinance.

(e) Any job training or education program using the funds, facilities, or staff of the City and County of San Francisco which, in the judgment of the Board of Supervisors or the Human Rights Commission, can make a contribution to the implementation of this ordinance shall submit reports to the Human Rights Commission as requested and shall be required to cooperate with the contractors, subcontractors, suppliers and unions and with the Human Rights Commission for the effectuation of the affirmative action nondiscrimination programs developed under this ordinance.

Contractor shall include the foregoing nondiscrimination provisions in all subcontracts let or awarded hereunder.



LEASE

BETWEEN

SAN FRANCISCO PORT COMMISSION

AND

WATERFRONT DEVELOPMENT CO.

September \_\_\_\_, 1969

Exhibit C





	<u>Page</u>
1. DEFINITIONS -----	1
(a) Leased Premises -----	1
(b) Lease Year -----	1
(c) Gross Rental -----	1
(d) Fair Rental Value -----	2
(e) Improvements -----	3
(f) Affiliate -----	3
2. LEASE -----	3
3. TERM -----	3
4. RENTAL -----	3
(a) Minimum rental -----	4
(b) Crediting of minimum rental -----	4
(c) Percentage rental -----	4
(d) Annual statements-----	6
(e) Records; Audit -----	6
5. DEPOSIT -----	7
6. DEFAULT -----	8
(a) Events of Default -----	8
(b) Remedies -----	9
7. SECURITY INTERESTS -----	10
8. STREET AREAS -----	14
9. SUBLETTING; ASSIGNMENT -----	14
10. USE OF THE LEASED PREMISES -----	16
11. DESTRUCTION; FIRE INSURANCE -----	17
12. INDEMNIFICATION; LIABILITY INSURANCE -----	18
13. WAIVER OF CLAIMS -----	20
14. COMPLIANCE WITH LAW -----	20
15. TAXES -----	20
16. ENTRY BY THE COMMISSION -----	21



	<u>Page</u>
17. IMPROVEMENTS AND ALTERATIONS -----	21
18. MECHANICS' LIENS -----	22
19. EMINENT DOMAIN -----	23
20. ATTORNEYS' FEE -----	27
21. BREACH NOT WAIVED -----	27
22. TERMINATION AND QUITCLAIM -----	27
23. HOLDING OVER -----	27
24. NOTICES -----	28
25. ACCESS -----	28
26. SHORT FORM -----	28
27. NO PARTNERSHIP -----	29
28. WAIVER OF SUBROGATION -----	29
29. QUIET ENJOYMENT -----	29
30. ADDITIONAL RIGHTS OF TERMINATION -----	29
31. EFFECT OF TERMINATION -----	29
32. DEVELOPMENT AGREEMENT -----	29
33. NONDISCRIMINATION PROVISION -----	30
34. SUCCESSORS AND ASSIGNS -----	30
35. MODIFICATION -----	30
36. SUBLEASE CLAUSE -----	30
37. MINERAL RESERVATION -----	31
38. SIGNS -----	31
39. TIME OF ESSENCE -----	31



L E A S E

THIS LEASE, made on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the SAN FRANCISCO PORT COMMISSION (hereinafter called the "Commission"), as landlord, and WATERFRONT DEVELOPMENT CO. (hereinafter called "Tenant"), as tenant.

W I T N E S S E T H :

The parties hereto agree as follows:

1. DEFINITIONS:

Unless the context otherwise specifies or requires, the terms defined in this paragraph, wherever used in and for all purposes of this Lease, shall have the meanings herein specified.

(a) Leased Premises. The term "leased premises" shall mean all of that certain real property in the City and County of San Francisco, State of California, described in Exhibit A attached hereto and incorporated herein by reference, together with the improvements thereon.

(b) Lease Year. The term "lease year" shall mean a calendar year unless the Tenant, at its election, specifies some other period of twelve consecutive months as a fiscal year; provided, however, that once the Tenant specifies a fiscal year as the "lease year" hereunder, the Tenant thereafter may not change such fiscal year (and lease year) without the prior written consent of the Commission. The first lease year and the final lease year during the term hereof may be less than a twelve-month period.

(c) Gross Rental. The term "gross rental" shall mean:

(i) the amount received by the Tenant from another or others as consideration for the right to use and occupy the leased premises, or any part or portion thereof, or any improvements therein (excluding, however, consideration received by the Tenant or an affiliate of the Tenant for the conveyance or transfer of ownership of, or for the conveyance or transfer other than by lease or sublease of an interest in, any improvements), plus the







fair rental value of any improvements (or any part or portion thereof) made upon but not including piers, piling and decking, which improvements are constructed upon the leased premises and after completion are used or occupied by the Tenant, an affiliate or relative of the Tenant, or the owner of improvements conveyed or transferred (other than by lease, sublease or assignment of this Lease) by the Tenant or an affiliate or relative; less (ii) all real property taxes and assessments, general and special, and other public charges levied, assessed or imposed upon or with respect to the leased premises or any improvements at any time located thereon which taxes and assessments have been or are to be paid by the Tenant; provided, however, that all such taxes, assessments and public charges for the tax year in which this Lease terminates shall be equitably prorated on the basis of such tax year.

(d) Fair Rental Value. The term "fair rental value" shall mean such rental figure as the Commission and the Tenant may agree upon as the fair annual rental for the portion of the leased premises in question. If the parties are unable to agree upon a rental figure, then the fair rental value shall be determined by an appraiser mutually acceptable to the Commission and the Tenant, who is a member of the American Institute of Real Estate Appraisers or of an organization of similar professional reputation and is familiar with the value of commercial property in San Francisco. If the Commission and the Tenant fail to agree upon a mutually acceptable appraiser within thirty (30) days after either in writing shall demand an appraisal, then, within fifteen (15) days after the end of such thirty-day period, each party shall select an appraiser and shall notify the other party in writing of the name of the appraiser so selected, and the two appraisers so selected shall select a third appraiser; provided, however, that if either party fails to select an appraiser or to give such notification within such fifteen-day period, then the appraiser selected by the other party shall act as the sole appraiser; and provided further that if the first two appraisers so appointed by the Commission and the Tenant shall fail to select a third appraiser within fifteen



days after their appointment, then the third appraiser shall be selected by the then Senior Judge of the United States District Court for the Northern District of California. Such appraiser or appraisers shall determine the fair rental value of the portion of the leased premises in question using as a standard the rental value, determined on the basis of a gross lease, of comparable premises used for comparable purposes, and such determination shall be final and binding on the parties. The fees of such appraiser or appraisers shall be borne one-half by the Commission and one-half by the Tenant. If there shall be more than one appraiser, then the decision of a majority shall govern and be binding on the parties.

(e) Improvements. The term "improvements" shall mean and include all piers, pilings, decks, platforms, buildings, structures, fixtures, landscaping, fine arts, recreational facilities, driveways, walks, and all other improvements of every kind and nature.

(f) Affiliate. The term "affiliate" shall mean and include any person, corporation, partnership, limited partnership, joint venture, trust or other entity controlling, controlled by, or in common control with the Tenant. The words "controlling", "controlled" and "control" shall mean the ownership of stock, a partnership interest or other interest, sufficient to entitle the holder or owner thereof to exercise effective voting control or other decision making authority.

2. LEASE:

Commission hereby lets to Tenant, and Tenant hereby hires and takes from Commission, the leased premises.

3. TERM:

The term of this Lease shall commence on \_\_\_\_\_ 19\_\_\_\_, and shall continue thereafter for \_\_\_\_\_ (\_\_\_\_), years and \_\_\_\_\_ (\_\_\_\_) months, terminating on \_\_\_\_\_, 20\_\_\_\_.

4. RENTAL:

During the term hereof, Tenant will pay rent to the Commission at its address for notices hereunder, or at such other place or





places as the Commission from time to time may notify Tenant in writing, as follows:

(a) Minimum rental. Tenant agrees to pay the sum of

---

Dollars (\$ \_\_\_\_\_) per month as minimum rental hereunder, commencing when the improvements referred to in paragraph 10 hereof are completed, or when such improvements shall be occupied and operated for the purpose for which intended, whichever event first occurs; provided, however, that minimum rental shall commence no later than 24 months after commencement of the term of this Lease. The improvements shall be deemed to be completed when notice of completion has been filed and all requisite certificates of occupancy shall have been obtained. Minimum rental for the first month in which payable shall be prorated as of the date upon which minimum rental commences and shall be payable on that date. Thereafter, minimum rental shall be paid in advance on the fifth day of each calendar month during the remaining term of this Lease. Upon any termination of this Lease during a month, without fault of the Tenant, the minimum rental for that month likewise shall be prorated as of the termination date and the unearned portion shall be refunded to the Tenant to the extent not credited against percentage rental. Proration for a portion of a month shall be made on the basis that the number of days of actual operation bears to thirty (30) days.

(b) Crediting of Minimum Rental. The minimum rental shall be credited against the percentage rental payable under this Lease, in the order of accrual, for the first five (5) lease years of the term hereof, until credited in full. Commencing with the sixth lease year, there shall be no further credit for minimum rentals for the first five lease years. In the sixth and succeeding lease years minimum rental shall be credited against percentage rental payable under this Lease for the lease year for which the minimum rental is paid.

(c) Percentage Rental. The Tenant shall pay to the Commission percentage rental for each lease year after occupancy or use of the improvements upon the leased premises, the Percentage Rentals for each of the following uses for which such leased premises then are being used or occupied to be that percentage





of the gross rental received by the Tenant for the right to use property covered by this Lease for that use which is set forth opposite that use in the following table:

<u>Use</u>	<u>Percentage Rental For That Use</u>
Garage and Parking	6%
Hotel and Motor Hotel	3%
Office	3%
Residential	2%
Payments made by Utilities	7%
Retail and other Commercial	
Uses not Listed	5%

The percentage rental payable for any lease year shall be paid to the Commission on or before the expiration of the sixtieth day after the expiration of such lease year.

The phrases "hotel" and "motor hotel", wherever used herein, shall include all structures and improvements used for or in connection with the operation of a hotel or motor hotel, including but not limited to rooms and other living accommodations used primarily for transient guests, conventions, meetings and other uses normally associated with a hotel or motor hotel, restaurants, parking, gift shops, barber and beauty shops, drug stores and other commercial uses and facilities, provided that the space devoted to the particular use is covered by the sublease or other management or occupancy arrangement between the Tenant and the operator of the hotel or motor hotel.

If, in any lease year, the adjusted gross rental for that lease year received by the Tenant for the the right to use property covered by the Lease shall exceed 16% of the total cost of development of such property, then 20% of that excess adjusted gross rental shall be paid to the Commission as additional rental within 60 days after the end of that lease year. The phrase "adjusted gross rental" with respect to any lease year shall mean gross rental (as defined in paragraph 1 (c)) for that lease year appropriately adjusted downward to that percentage of such gross rental which the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index (all items) San Francisco - Oakland, California (1959=100) (the "Price Index") as of the base date, being the date on which the Tenant files notice of completion of construction

THE UNIVERSITY OF CHICAGO  
LIBRARY

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

1950

of the improvements bears to said Price Index as of the last day of that lease year. The purpose of this adjustment is to preserve for the Tenant the benefit of any increases in gross rental resulting from increases in the cost of living or inflation. If the Price Index is no longer published, the parties shall use such index as is most nearly comparable to said Price Index as now published, and appropriate adjustments will be made if necessary. If the Price Index is not published for the date upon which Tenant files notice of completion as aforesaid, then the base date shall be the last date for which such Price Index is published next preceding the date upon which Tenant files notice of completion of construction of the improvements. If such Price Index is not published for the last day of any lease year, then the average of such Price Index for the entire lease year shall be used. The total cost of development shall be furnished by the Tenant to the Commission as soon as finally determined, and the Commission may inspect at all reasonable times such books and records of Tenant as may be necessary for the Commission to verify that the total cost of development so furnished is accurate.

(d) Annual Statements. Within sixty (60) days immediately following the end of each lease year, a statement of gross rental for the previous lease year shall be made by Tenant, signed by an officer thereof and delivered to the Commission, and at such time there shall be paid to the Commission the excess, if any, of percentage rental over and above the applicable minimum rental paid by Tenant under the terms and provisions hereof.

(e) Records; Audit. The acceptance by the Commission of any monies paid to the Commission by the Tenant as percentage rental as shown by any annual statement of gross rental furnished by Tenant, shall not be an admission of the accuracy of said annual statement, of the sufficiency of the amount of said percentage rental payment, but the Commission shall be entitled at any time within two (2) years after the receipt of such percentage rental payment to question the sufficiency of the amount





thereof, or the accuracy of the statement or statements furnished by Tenant to justify the same. Tenant shall, for said period of two (2) years after submission by Tenant of any such statement, keep all of Tenant's records, books, accounts and other data which in anywise bear upon or are required to establish in detail Tenant's gross rentals as shown by any such statement, and shall upon request make the same available to the Commission or any auditors appointed by the Commission, the City and County of San Francisco or the State of California for examination in San Francisco, California at any reasonable time during said two-year period. Should any such auditor find that such statements so furnished by Tenant to the Commission have understated the gross rentals to the extent of 5% or more thereof from the leased premises for the lease year under review, then and in that event, the Tenant immediately shall reimburse the Commission, the City and County of San Francisco or the State of California for any sums reasonably expended by it in making such audit for such lease year.

5. DEPOSIT:

Upon execution of this Lease, Tenant shall deliver to the Commission a deposit in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) which may be in the form of (a) cash; (b) a surety bond in form reasonably acceptable to the Commission and issued by a company, as surety, licensed as such under the insurance code of the State of California; (c) negotiable notes or bonds issued by the Federal Government or any of its instrumentalities upon the basis of their fair market value; (d) negotiable certificates of deposit issued by a Federal or a State bank engaged in business in California, or any combination of such cash, surety bond, notes, bonds, and certificates of deposit. The deposit shall be held by the Commission as security for the faithful performance by the Tenant of all of the terms, covenants, and the conditions of this Lease to be performed by the Tenant. The Tenant may change the form of such deposit at any time or from time to time from one or more to one or more other permitted forms of deposit. The deposit, if cash or a check, shall be deposited in an account of the Commission in a bank or trust company selected by it.

The Commission shall not be under an obligation to pay or





earn interest on the deposit, but if interest shall accrue or be payable thereon, such interest shall be the property of the Tenant and promptly shall be paid to the Tenant when received by the Commission, except that interest earned on any cash deposit may be retained by the Commission.

If a surety bond is used, each such bond shall provide that the surety will deem the requirements of Section 2845 of the Civil Code of the State of California satisfied if the Commission joins the Tenant and the surety as co-defendants in any lawsuit brought by the Commission on such bond.

6. DEFAULT:

(a) Events of Default. The following events shall constitute events of default hereunder:

(1) the default by the Tenant in the performance of any covenant or agreement herein contained with reference to the payment of rent, and the continuance of such default for thirty (30) days (or such longer period as reasonably may be required in which to remedy such default) after delivery by the Commission of written notice thereof to the Tenant;

(2) the default by the Tenant in the performance of any covenant or agreement herein contained, other than the payment of rent, and the continuance of such default, without diligent effort being made to cure the same, for sixty (60) days after delivery by the Commission of written notice thereof to Tenant;

(3) the appointment of a receiver to take possession of all or substantially all of the assets of the Tenant, which receiver shall not be discharged within ninety (90) days thereafter, except that this clause shall not affect, or modify any rights permitted under, paragraph 7 hereof;

(4) a general assignment by Tenant for the benefit of creditors;

(5) Tenant shall file a voluntary petition in any insolvency or bankruptcy proceedings;

(6) any involuntary petition shall be filed against Tenant under any insolvency or bankruptcy act and shall not be dismissed within ninety (90) days thereafter.



(b) Remedies. Upon the occurrence of an event of default hereunder, the Commission may, at its option, re-enter and take possession of the leased premises and

(1) declare this Lease terminated, or

(2) without terminating this Lease from time to time relet the leased premises or any part thereof to a tenant suitable to the Commission for such term or terms (which may be for a term extending beyond the term of this Lease) and such conditions as the Commission in its sole discretion may deem advisable.

Upon each such reletting (i) Tenant shall be immediately liable to pay to the Commission, in addition to any indebtedness other than rent due hereunder, the cost and expense of such reletting incurred by the Commission, and the amount, if any, by which the rent reserved in this Lease for the period of such reletting (up to but not beyond the term of this Lease) exceeds the amount which the Commission in the exercise of reasonable diligence is able to obtain for rent for such period upon such reletting or (ii) at the option of the Commission, the rents received by the Commission, after exercising reasonable diligence to obtain maximum rents, from such reletting shall be applied first to the payment of any indebtedness, other than the rent due hereunder from the Tenant to the Commission; second, to the payment of said costs and expenses of such reletting; third, to the payment of rents due and unpaid hereunder and the residue, if any, shall be held by the Commission and applied in payment of future rent as the same may become due and payable hereunder, and any residue remaining at the end of the term shall be paid over to the Tenant. If such rentals received from such reletting under clause (ii) during any calendar month be less than that to be paid during that month by the Tenant hereunder, the Tenant shall pay any such deficiency to the Commission. Such deficiency shall be calculated and paid monthly. Notwithstanding any such reletting without termination, the Commission may at any time thereafter elect to terminate this Lease after such reletting for such previous breach.

...the ...  
...the ...  
...the ...

...the ...  
...the ...  
...the ...  
...the ...

...the ...  
...the ...  
...the ...  
...the ...

...the ...  
...the ...  
...the ...  
...the ...

...the ...  
...the ...  
...the ...  
...the ...

...the ...  
...the ...  
...the ...  
...the ...

...the ...  
...the ...  
...the ...  
...the ...



If the Commission at any time shall be entitled to and shall terminate this Lease for any breach, in addition to any other remedy it may have, the Commission may recover from the Tenant all damages it may incur by reason of such breach, including the cost of recovering the leased premises and including the excess, if any, at the time of such termination of the amount of percentage rental reserved in this Lease for the remainder of the stated term over the then fair rental value of the leased premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from the Tenant to the Commission. For the purposes of this paragraph 6, the amount of rental reserved in this Lease for each unexpired lease year shall be deemed to be the amount of percentage rental payable hereunder for the twelve consecutive calendar months ended next preceding the calendar month in which the breach occurred, except that: (i) if the breach shall have occurred before percentage rental shall have been payable for a period of twelve consecutive calendar months, then the percentage rental payable for the calendar months which shall have expired for which percentage rental is payable shall be averaged and extended on a twelve-month annualized basis, and (ii) if the breach occurs before any percentage rental is payable, then the annual amount of minimum rental payable hereunder shall be deemed to be the amount of rental reserved hereunder for each unexpired lease year.

7. SECURITY INTERESTS:

The Commission and the Tenant acknowledge that the Tenant may from time to time encumber Tenant's leasehold estate hereunder as to all or any portion of the leased premises by the lien of a mortgage, deed of trust or other instrument given by Tenant as security for indebtedness. For the express benefit of any such mortgagee, beneficiary under a deed of trust or other secured party (hereinafter referred to as "Lender"), the Commission and the Tenant agree as follows:

Subscription price, Five Dollars per Annum in Advance. Single Copies, Fifteen Cents.  
Entered as Second-Class Matter, May 26, 1894. Postpaid at Special Rate of \$3.00 per Annum.  
Acceptance for mailing at Special Rate of Postage provided for in Act of October 3, 1917.  
Postpaid at Chicago, Ill., under Post Office No. 100,000, dated May 1, 1919.

Published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill.  
Copyright, 1919, by American Medical Association

Second-Class Postage Paid at Chicago, Ill.  
Postmaster: Send address changes to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago, Ill.

Entered as Second-Class Matter, May 26, 1894. Postpaid at Special Rate of \$3.00 per Annum.  
Acceptance for mailing at Special Rate of Postage provided for in Act of October 3, 1917.

Postpaid at Chicago, Ill., under Post Office No. 100,000, dated May 1, 1919.  
Published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill.

Copyright, 1919, by American Medical Association  
Second-Class Postage Paid at Chicago, Ill.

Postmaster: Send address changes to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago, Ill.

Entered as Second-Class Matter, May 26, 1894. Postpaid at Special Rate of \$3.00 per Annum.  
Acceptance for mailing at Special Rate of Postage provided for in Act of October 3, 1917.

Postpaid at Chicago, Ill., under Post Office No. 100,000, dated May 1, 1919.  
Published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill.

Copyright, 1919, by American Medical Association  
Second-Class Postage Paid at Chicago, Ill.

Postmaster: Send address changes to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago, Ill.

Entered as Second-Class Matter, May 26, 1894. Postpaid at Special Rate of \$3.00 per Annum.  
Acceptance for mailing at Special Rate of Postage provided for in Act of October 3, 1917.

Postpaid at Chicago, Ill., under Post Office No. 100,000, dated May 1, 1919.  
Published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill.

Copyright, 1919, by American Medical Association  
Second-Class Postage Paid at Chicago, Ill.

Postmaster: Send address changes to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago, Ill.

Entered as Second-Class Matter, May 26, 1894. Postpaid at Special Rate of \$3.00 per Annum.  
Acceptance for mailing at Special Rate of Postage provided for in Act of October 3, 1917.

Postpaid at Chicago, Ill., under Post Office No. 100,000, dated May 1, 1919.  
Published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill.

Copyright, 1919, by American Medical Association  
Second-Class Postage Paid at Chicago, Ill.

Postmaster: Send address changes to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago, Ill.

Entered as Second-Class Matter, May 26, 1894. Postpaid at Special Rate of \$3.00 per Annum.  
Acceptance for mailing at Special Rate of Postage provided for in Act of October 3, 1917.

Postpaid at Chicago, Ill., under Post Office No. 100,000, dated May 1, 1919.  
Published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill.

Copyright, 1919, by American Medical Association  
Second-Class Postage Paid at Chicago, Ill.

Postmaster: Send address changes to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago, Ill.

Entered as Second-Class Matter, May 26, 1894. Postpaid at Special Rate of \$3.00 per Annum.  
Acceptance for mailing at Special Rate of Postage provided for in Act of October 3, 1917.

Postpaid at Chicago, Ill., under Post Office No. 100,000, dated May 1, 1919.  
Published by the American Medical Association, 535 North Dearborn Street, Chicago, Ill.

Copyright, 1919, by American Medical Association  
Second-Class Postage Paid at Chicago, Ill.

Postmaster: Send address changes to JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 535 North Dearborn Street, Chicago, Ill.



(a) The execution of any mortgage, deed of trust or other security instrument, or the foreclosure thereof or sale thereunder either by judicial proceedings or through any power reserved therein, or conveyance by Tenant to Lender, or the exercise of any right, power or privilege reserved therein, shall not constitute a violation of any of the terms or conditions of this Lease or an assumption by Lender, personally, of any of the obligations of Tenant under this Lease except as provided in subparagraph (c) below.

(b) The Lender, at its option, may at any time before the Commission's exercise of any of its rights pursuant to paragraph 6 hereof, or before the expiration of the period specified in subparagraph (f) below, whichever last occurs, perform any of the covenants and conditions required to be performed hereunder by the Tenant, to the extent that such covenants and conditions are applicable and pertain to and affect the portion of the leased premises encumbered by such lien, and such performance by the Lender shall be as effective to prevent the termination of this Lease as to the portion of the leased premises so encumbered as the same would have been if done and performed by the Tenant.

(c) The Commission hereby agrees with respect to any mortgage or deed of trust or other security instrument executed by the Tenant of a leasehold interest in all or part of the leased premises that the Lender may cause such mortgage, deed of trust or other security instrument to be recorded and may enforce said mortgage, deed of trust or other security instrument and upon foreclosure sell and assign said leasehold and the interest of the Tenant in any improvements thereon to an assignee from whom it may accept a purchase money mortgage for a portion of the purchase price, or may acquire title to said leasehold and interest in improvements in any lawful way, and if the Lender shall become the assignee, may sell and assign said leasehold and said interest of the Tenant in any improvements thereon.



Should the Lender acquire Tenant's leasehold estate hereunder as to the portion of the leased premises encumbered by such lien by foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any mortgage, deed of trust or other security instrument, or by a proper conveyance from Tenant, Lender shall take Tenant's leasehold estate subject to all of the provisions of this Lease, and shall, so long as and only so long as it shall be the owner of such estate, assume personally the obligations of Tenant, except that the Lender shall not be obligated to construct or complete any improvements upon the leased premises.

(d) Should Lender acquire Tenant's leasehold estate hereunder as to the portion of the leased premises encumbered by such lien, by foreclosure or other appropriate proceedings in the nature thereof or as a result of any other action or remedy provided for by any mortgage, deed of trust or other security instrument, or by a conveyance from Tenant in lieu of foreclosure, the Lender may sublease such portion for any period or periods within the term of this Lease, or may assign Tenant's leasehold estate hereunder as to such portion by sale or otherwise, provided that any assignee or purchaser of said leasehold estate or any person taking through any other means and their respective successors in interest, shall take said leasehold estate subject to all of the covenants and conditions herein contained on the part of the Tenant to be kept, observed and performed, and shall, as a condition of such assignment, purchase or other taking, assume and agree to perform all such covenants and conditions.

(e) No such foreclosure, assignment, sale, hypothecation, or subleasing of the Tenant's leasehold estate hereunder as to the portion of the leased premises encumbered by such lien, nor the acceptance of rent by the Commission from any such assignee, purchaser, sublessee or any other person, shall relieve, release or in any manner affect the liability of the Tenant here-





under.

(f) Upon the occurrence of an event of default under paragraph 6 hereof, the Lender shall have sixty (60) days after receipt of written notice from the Commission setting forth the nature of the Tenant's default, and a reasonable time thereafter if the Lender shall have commenced foreclosure proceedings or other appropriate proceedings in the nature thereof within such sixty (60) days' period and is diligently prosecuting the same, within which to endeavor to cure such default. The right of the Commission to exercise its rights pursuant to paragraph 6 hereof upon the failure or neglect of the Tenant to observe, keep and perform the covenants and conditions hereof, is, and shall continue to be, at all times while the Tenant is indebted to the Lender subject to and conditioned upon the Commission having first given to the Lender written notice of such default, specifying the same, and the Lender having failed to cure such default within sixty (60) days after receiving such written notice of default, or within a reasonable time thereafter if it shall have commenced foreclosure or other appropriate proceedings in the nature thereof within such sixty (60) days' period and is diligently prosecuting the same. The fact that the time has expired for performance of a covenant by the Tenant shall not be deemed to render performance by the Lender or a purchaser impossible, but in such event, if the Lender or any purchaser shall promptly undertake to perform the Tenant's defaulted obligation and shall diligently proceed with such performance, the time for such performance shall be extended by such period as shall be reasonably necessary to complete such performance. If, and so long as, the Lender is prevented, by any process, injunction or other order issued by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Tenant or any injunction or other suit, action or proceedings, from commencing or prosecuting foreclosure or other appropriate proceed-





ings in the nature thereof, it shall be deemed to have commenced foreclosure proceedings and to have diligently prosecuted said proceedings for purposes of this subparagraph (f); provided, however, that the Lender shall use reasonable efforts to contest and appeal the issuance of any such process, injunction or other order.

(g) The Lender shall give written notice to the Commission of the Lender's address and the existence and nature of its security interest. Failure to give such notice shall constitute a waiver of Lender's right to receive written notice hereunder.

8. STREET AREAS:

If with the consent of the Tenant any portion of the leased premises is or becomes subject to street easements, the Tenant may use such portions of the leased premises for other than street purposes provided that it shall be the full responsibility of the Tenant to obtain abandonment or release of such street easements or other easements that interfere or may interfere with the Tenant's use of the leased premises. The Tenant may dedicate to the City of San Francisco for the term of this Lease any street or streets in the leased premises for public use.

9. SUBLETTING; ASSIGNMENT:

(a) Tenant may at any time, and from time to time, sublet all or any portion of the leased premises for such term of years (expiring, however, prior to or at the end of the term of this Lease) and for such rental and upon such other terms and conditions as the Tenant may in its sole discretion determine,



provided, however, that each such sublease shall be subject to the terms of this Lease, and no such sublease shall in any way relieve Tenant from any obligation or liability hereunder; and provided further that prior to the commencement of the term of each sublease the Tenant shall give written notice to the Commission of such sublease, and of the name and address of the person upon whom notices may be served which will be effective and binding on the sublessee under such sublease, and the Tenant shall furnish a true, full and complete copy of each sublease to the Commission, within thirty (30) days after such sublease shall have been fully executed.

(b) The Tenant, upon giving the Commission prior written notice of its intention so to do, may assign this Lease, or its leasehold estate in any portion of the leased premises, to one or more financial institutions, or to any other assignee who shall assume and agree to perform all of the covenants, provisions and agreements to be kept and performed hereunder by the Tenant and whose financial responsibility shall be subject to approval of the Commission, which approval shall not be unreasonably withheld. The Tenant, within thirty (30) days after any such assignment, shall give the Commission written notice of such assignment and shall furnish the Commission a full, true and correct copy of such assignment. After any such assignment, the Tenant shall have no further liability hereunder for any covenant, provision or agreement to be performed after the date of such assignment, except that no such assignment shall relieve the Tenant from liability for failure to complete the new improvements which the Tenant is obligated to construct upon the leased premises.

(c) In the event that there shall be any termination of this Lease because of any default on the part of the Tenant under the terms of this Lease, the sublessee under the terms of any sublease covering ten per cent (10%) or more of the square-foot area of the improvements made or to be made upon the leased premises shall be entitled to attorn to the Commission, and





such sublease then shall continue in effect for the term thereof as a direct lease between the Commission and such sublessee. Such agreement by the Commission permitting attornment as to any sublease shall be on condition that (a) the term of such sublease shall not exceed that of this Lease, (b) such sublease shall contain all of the provisions, covenants and conditions herein set forth with respect to the leased premises as the same may reasonably be applicable to the area so sublet, and (c) the total rental payable under such sublease shall not be less (or if so, the sublessee shall agree to pay the deficiency by which the same is less) than the pro rata portion of the average total rental payable annually under the terms of this Lease for that portion of the term hereof which shall have elapsed prior to such termination, based upon the area so sublet.

10. USE OF THE LEASED PREMISES:

(a) The Tenant shall develop, improve and use the leased premises substantially in accordance with the development program set forth in the Scope of Development attached hereto, marked "Exhibit B" and incorporated herein by reference. The Tenant shall not use the leased premises for any purpose not reasonably related to those set forth in Exhibit B without the prior written consent of the Commission, which consent shall not be unreasonably withheld. Any necessary building permits shall be obtained from the City of San Francisco, and all construction upon the leased premises shall be in conformity with the building code of the City of San Francisco.

(b) Notwithstanding anything to the contrary contained herein, the Tenant shall have the right to make portions of the leased premises available for public use to the extent that the Tenant and Commission mutually agree that such use will enhance the leased premises as a whole, and to the extent required by any governmental authority having jurisdiction. The Tenant also shall have the right to dedicate for street purposes such portion





or portions of the leased premises as may be required to be dedicated by the City and County of San Francisco; and the Commission shall join in the dedication of any such portion lying within the leased premises. No dedication of any such portion lying within the leased premises for street or other public purposes shall extend beyond the term of this Lease.

11. DESTRUCTION; FIRE INSURANCE:

(a) In the event that at any time during the first forty-five (45) lease years of the term of this Lease there shall be a partial or total destruction of the improvements from time to time theretofore constructed on the leased premises by Tenant, resulting from any cause or casualty for which insurance coverage at that time was obtained or obtainable by the Tenant (other than damage or destruction by earthquake), the Tenant shall, within one hundred eighty (180) days after such destruction, commence and thereafter diligently proceed to restore and rehabilitate said buildings and improvements or to construct buildings and improvements replacing the same. If any such partial or total destruction shall occur during the balance of the term of this Lease, or shall be material and shall be caused by earthquake or a cause or casualty for which insurance was not obtainable by the Tenant at the time of such damage or destruction, the Tenant shall: (i) diligently proceed to restore or rehabilitate the improvements; or (ii) terminate this Lease by giving the Commission written notice of such termination within ninety (90) days after such destruction, whichever of (i) or (ii) the Tenant shall elect; provided, however, that if the Tenant shall elect to terminate this Lease pursuant to (ii) above, then it shall demolish the remainder of such partially or totally destroyed improvements unless the Commission within ten (10) days after receipt of the written notice of termination, shall advise the Tenant in writing of the Commission's desire to retain such partially or totally destroyed improvements.



(b) The Tenant shall at all times during the term hereof keep in force a policy or policies of insurance against loss or damage by fire, explosion, lightning and the perils covered by the standard extended coverage endorsement, on all insurable improvements located on the leased premises. Said policy or policies shall be at least in the amount of 90% of replacement cost of such structures and shall contain standard replacement cost endorsements. Said policies shall be placed with insurance companies authorized to do business in the State of California.

(c) In the event of loss of use caused by any of the perils insured against under the aforesaid fire and extended coverage insurance policies, rent shall continue to be paid to the Commission during the period of such loss of use in an amount equal to the minimum rental due during the then current lease year, or the average annual rental, both minimum and percentage, paid during the previous three (3) lease years, whichever is greater. The Tenant may carry, or may cause its sublessees and tenants to carry, insurance to protect against and to cover its obligation to the Commission under this subparagraph (c).

12. INDEMNIFICATION; LIABILITY INSURANCE:

(a) The Tenant hereby agrees to indemnify and hold the Commission harmless from and against all liability, expense, causes of action and claims for injuries to or deaths of persons, and loss or destruction of and damage to property, from any cause whatsoever, arising out of or in any way connected with use of the leased premises by the Tenant or those claiming under the Tenant. The Commission, its officers, agents and employees shall, except as hereinafter provided, be free from liabilities and claims for damages, and suits for or by reason of any injury or injuries to any person or persons, or property brought upon or affixed to the premises, of any kind whatsoever, from any cause or causes whatsoever, while in, upon or adjacent to, or in any way connected with the leased premises, or in any occupancy of said leased premises by Tenant, including the negligence of, but excluding intentional harm by, the Commission, its officers,





agents, or employees, and Tenant hereby covenants and agrees to save harmless the Commission from all such liabilities, claims for damages, suits and litigation expenses.

(b) Tenant shall maintain and pay premiums on a policy or policies of liability insurance, which names the Commission and its officers, agents and employees, as additional insureds, with a company or companies authorized to do business in California approved by the Commission, which approval shall not be unreasonably withheld. Such policy or policies shall cover the leased premises and its operations against claims for personal injury and death in an amount of not less than \$500,000.00 for injury or death of any one person, and \$1,000,000.00 for injury or death of all persons in any one accident, and \$1,000,000.00 for property damage. Tenant shall furnish to the Commission a certificate evidencing the fact that the insurance described in this paragraph has been obtained and is in full force and effect and that such insurance cannot be cancelled or a change made affecting coverage without ten (10) days' prior notice to the Commission. Tenant shall promptly notify the Commission of any change in the terms of such policy or policies and shall provide the Commission with copies thereof. Said policy or policies shall contain a broad form of contractual liability coverage, including leases. The procuring of this policy or policies shall not be construed to be a substitute in any respect for Tenant's obligations under this Lease. The Tenant and the Commission shall periodically review the amount of the public liability insurance carried pursuant to this paragraph, but in any event not less than every ten (10) years during the term of this Lease. If it is found to be the general commercial practice in the City and County of San Francisco for reasonably prudent persons similarly situated with respect to comparable leases to carry public liability insurance in an amount substantially greater or lesser than the amount





then being carried by Tenant with respect to risks comparable to those associated with the leased premises, the amount carried by Tenant shall be increased or decreased to substantially conform to such general commercial practice.

13. WAIVER OF CLAIMS:

The Tenant, as a material part of the consideration for this Lease, hereby waives all claims against the Commission for damages to goods, wares, goodwill, merchandise, equipment and persons, in, upon or about the leased premises from any cause arising at any time, including all claims arising out of the negligence of the Commission, its officers, agents or employees.

14. COMPLIANCE WITH LAW:

The Tenant shall observe and comply with all laws, rules and regulations having general application affecting the leased premises now promulgated by any agency of the State of California or City and County of San Francisco (other than the Commission), having jurisdiction therein and any reasonable rules or regulations of general application affecting the leased premises not inconsistent with this Lease as may be promulgated by any such agency; excepting, however, any laws, rules or regulations which are adopted or promulgated after the date hereof and prohibit or adversely affect the use or occupancy of the leased premises or of any improvements thereon, for the purposes and upon the terms herein contemplated, or would result in the leased premises or the improvements thereon violating or failing to conform to zoning or building ordinances, rules or regulations.

15. TAXES:

The Tenant shall pay all real estate and possessory interest taxes, assessments, or other charges levied, assessed or imposed during the term hereof upon the leased premises or the improvements thereon and shall not permit any such taxes, assessments or other charges to become a defaulted lien on the leased premises or said improvements; provided, however, that the Tenant shall not be required to pay, discharge or remove any such tax, assessment or other charge so long as the Tenant shall contest the same, or the validity thereof,



in good faith and by appropriate legal or equitable proceedings which shall operate to prevent the collection of the tax, assessment or charge so contested and the sale of the leased premises to satisfy the same. Any such proceedings or any suit, action or proceeding to recover back any tax, assessment or charge paid, may be brought in the name of the Tenant or of the Commission or both, at the option of the Tenant. In the event that the Tenant defaults in such payments of taxes, assessments or charges, the Commission may make such payments and secure reimbursement from the Tenant or from the lease deposit made with the Commission pursuant to paragraph 5 above, except that during the pendency of any good faith contest by the Tenant as aforesaid of such tax, assessment or charge, or the validity thereof, the Commission shall not have the right to pay, remove or discharge the same.

16. ENTRY BY THE COMMISSION:

The Commission, through its authorized agents, shall have the right at all reasonable times to go upon the leased premises for the purpose of inspecting the same or for the purpose of posting notices of nonliability for alterations, additions, or repairs, or for police or fire protection.

17. IMPROVEMENTS AND ALTERATIONS:

(a) The Tenant may from time to time construct, install or place upon the leased premises such improvements, and thereafter make changes or alterations thereto, as the Tenant sees fit, provided, however, that unless such improvements or alterations are to be used for one or more or all of, or a use reasonably related to, the uses set forth in Exhibit B, the prior written consent of the Commission shall first be had and obtained, which consent shall not be unreasonably withheld; and provided further that changes and alterations in the exterior or structural parts or portion of any building shall not be made without the prior written consent of the Commission if such change or alteration will materially decrease the fair market





ments, and for exterior changes or alterations therein, shall be submitted to the Chief Engineer of the Commission, prior to commencement of work thereon, for approval, which approval shall not be unreasonably withheld. Failure to approve or disapprove such plans or specifications within 15 days after receipt of the same shall be deemed to be an approval. Any disapproval shall be in writing and shall specify the reason therefor.

(b) The Tenant shall maintain and keep in good sound repair all improvements constructed, installed or placed upon the leased premises, without cost whatever to the Commission, ordinary wear and tear and damage by earthquake, fire or other casualty excepted, and damage or destruction caused by or resulting from the wilful or negligent acts or omissions of the Commission excepted. Nothing contained in this subparagraph (b) shall modify the provisions of paragraph 11 hereof.

(c) The Commission disclaims throughout the term of this Lease any interest in or ownership of any improvements and personal property from time to time constructed, installed or placed by the Tenant upon the leased premises, and agrees that the Tenant may remove, and the Tenant agrees to remove, all moveable trade fixtures and all personal property at or prior to the expiration or earlier termination of this Lease, but the Tenant shall repair any damage caused by removal of any such trade fixtures; provided however, that at its election the Tenant may abandon any such trade fixtures in lieu of removing the same in which event title to all such trade fixtures so abandoned shall vest in the Commission.

#### 18. MECHANICS' LIENS:

The Tenant shall keep the leased premises and the improvements thereon free from any mechanics' liens arising out of any work performed or material furnished, or shall furnish the Commission reasonable security for the discharge thereof; provided, however, that the Tenant shall have the right to contest the amount or validity of any such lien or claimed lien so long as by such proceedings or otherwise the Tenant shall prevent any sale, foreclosure or forfeiture of the leased premises by reason of nonpayment of the amount





of such lien, and during the pendency of any such proceedings, the Tenant shall not be deemed to be in default under this paragraph 18.

19. EMINENT DOMAIN:

(a) Whenever the words "condemned" or "condemnation" are used herein, they shall be deemed to have the same meaning as the words "eminent domain". In the event that any action or proceeding is commenced for condemnation of the leased premises, or any portion thereof, or if the Commission or the Tenant is advised in writing by any government, or agency or department or bureau thereof, or any entity or body having the right or power of condemnation, of its intention to condemn the leased premises, or any portion thereof, Tenant having the right of possession of the leased premises at the time thereof, or if the leased premises or any portion thereof be condemned through such action, then and in any of such events:

(b) The Commission may, without affecting the validity and existence of this Lease other than as hereinafter expressly provided in paragraph (d) below, agree to sell or convey to the condemnor any land sought to be condemned, without first requiring that any action or proceeding be instituted, or, if such action or proceeding shall have been instituted, without requiring any trial or hearing thereof, and the Commission is expressly empowered to stipulate to judgment therein as to the land (exclusive of improvements and trade fixtures) included in the part and portion of the leased premises sought by the condemnor, free from this Lease and the rights of Tenant hereunder excepting only as hereinafter in paragraphs (c) and (e) provided. The Tenant shall have no claim against the Commission or the condemnor, nor be entitled to any part or portion of the amount that may be paid or awarded as a result of the sale, for the reasons as aforesaid, or condemnation of any land (exclusive of improvements and trade fixtures) included in the leased premises or any part or portion thereof, Tenant hereby assigning, transferring, and setting over unto the Commission the interest,



if any, which Tenant would but for this provision have in, to, upon or against the land embraced in the leased premises, or any part or portion thereof, or the amount agreed to be paid or awarded and paid to the Commission for such land.

(c) The Tenant may, without affecting the validity and existence of this Lease other than as expressly provided in paragraph (d) below, agree to sell or convey to the condemnor any improvements and trade fixtures upon the leased premises, without first requiring that any action or proceeding be instituted, or, if such action or proceeding shall have been instituted, without requiring any trial or hearing thereof, and the Tenant is expressly empowered to stipulate to judgment thereon as to the improvements and trade fixtures upon or comprising the part or portion of the leased premises sought by the condemnor, free from this Lease and the rights of the Commission hereunder excepting only as otherwise provided in paragraph (b) above. The Commission shall have no claim against the Tenant or the condemnor nor be entitled to any part or portion of the amount that may be paid or awarded as a result of the sale, for the reasons as aforesaid, or condemnation of the improvements and trade fixtures included in the leased premises, or any part or portion thereof, the Commission hereby setting over unto the Tenant the interest, if any, which the Commission would but for this provision have in, to, upon or against the improvements and trade fixtures upon the leased premises, or any part or portion thereof, or the amount agreed to be paid or awarded and paid therefor.

(d) In case an easement only shall be taken, or the Tenant shall lose possession of a part but not all of the leased premises, the part so condemned shall be removed and released from the effect of this Lease and shall no longer constitute a part of the leased premises after such taking and the minimum





rents shall be reduced, except as otherwise herein specified, effective as of the date the condemning authority shall take possession, to an amount that shall bear the same relationship to the minimum rental before the taking as the rental value of the land embraced in the remaining leased premises after the taking bears to the rental value of the land embraced in the leased premises immediately before such taking, and this Lease otherwise shall remain in full force and effect and shall not terminate; PROVIDED, HOWEVER, that in the event that the Tenant shall lose possession of a portion only of the leased premises and the remainder will not result in the leased premises with the improvements thereon being a practical commercial facility with adequate parking and access and reasonably suitable for the conduct of business in a manner consistent with the conduct of business prior to such taking, then, and in such case, the Tenant shall have the right and option to cancel and terminate this Lease upon thirty (30) days' prior notice in writing given to the Commission within thirty (30) days after the Tenant loses possession to the condemning authority of the portion so taken. In determining the rental value of the leased premises after and before a condemnation of an easement therein, or loss of possession of a part but not all of the leased premises, the values shall be as determined in the condemnation action either directly or as can be computed from the amount of the award or other figures determined by the trier of facts to the extent possible, otherwise by mutual agreement or, failing agreement, by an appraiser to be mutually agreed upon; PROVIDED, HOWEVER, that in the event that no agreement on such appraiser is reached within thirty days after the condemnation award is finally determined without further right of appeal or review, then such values shall be determined by three appraisers, each party to choose one appraiser and the third to be chosen by the two first chosen, and if either party shall fail to choose an appraiser within ten (10) days after written demand by the oth-





er party to do so, or if the two appraisers first chosen shall fail to choose the third within thirty (30) days after the second is chosen, then and in each such case such appraiser shall be chosen by the Senior Judge of the United States District Court for the Northern District of California upon petition by either party after not less than fifteen (15) days' written notice to the other. The decision of a majority of such appraisers shall be final and binding upon the parties. All appraisers shall be members of the American Institute of Real Estate Appraisers or of an organization of similar professional reputation and shall be familiar with the value of commercial property in San Francisco. The costs of appraisal shall be divided equally between the Commission and the Tenant.

(e) The Tenant shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by the Tenant in its own right on account of any and all damages to its business by reason of any condemnation and for or on account of any cost or loss to which the Tenant might be put in altering improvements as a result of such condemnation and in removing or moving its furniture, fixtures and equipment so long as such action or the payment of such damages shall not affect or diminish the compensation payable to the Commission as provided for herein.

(f) Notwithstanding any other provision contained in this Lease, if the Commission or the City and County of San Francisco, California, shall condemn or otherwise take any portion of the leased premises through exercise of the power of eminent domain during the term of this Lease, the award to the Tenant shall be not less than the total cost of development (as defined in the Development Agreement referred to in paragraph 32 hereof) incurred by the Tenant with respect to such portion less 1.5% per annum from the date of completion of that portion.



20. ATTORNEYS' FEE:

Should either party commence an action against the other to enforce any provision herein contained, the finally prevailing party shall be entitled to recover from the other a reasonable attorneys' fee which shall be fixed by the court.

21. BREACH NOT WAIVED:

The waiver by the Commission of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition with respect to any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by the Commission shall not be deemed to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rental so accepted, regardless of the Commission's knowledge of such preceding breach at the time of acceptance of such rent. No act or omission by either the Commission or the Tenant shall constitute a modification of this Lease, it being understood by all parties, including any Lender, that this Lease may be charged or otherwise modified only by written agreement of the Commission and the Tenant.

22. TERMINATION AND QUITCLAIM:

The Tenant will, upon expiration or earlier termination of this Lease, peaceably and quietly leave, surrender and yield up to the Commission all and singular, the leased premises, and, if requested, execute and deliver to the Commission a good and sufficient quitclaim deed to the rights arising hereunder. Should the Tenant fail or refuse to deliver to the Commission, a quitclaim deed, as aforesaid, a written notice by the Commission reciting the failure or refusal of Tenant to execute and deliver said quitclaim deed as herein provided shall from the date of recordation of said notice be conclusive evidence against the Tenant and all persons claiming under the Tenant of the termination of this Lease.

23. HOLDING OVER:

Any holding over, after the expiration of the term of this





Lease, shall be deemed a month-to-month tenancy, and upon each and every one of the terms, conditions and covenants of the within Lease. In the event of a month-to-month tenancy, the Commission may cancel the same upon thirty (30) days' notice to the Tenant, and the Tenant shall have the privilege of cancelling same upon thirty (30) days' notice to the Commission, all notices to be in writing.

24. NOTICES:

Any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered one day after a copy of the same has been deposited in the United States mail, registered or certified and postage prepaid, addressed as follows: If to the Commission at Ferry Building, San Francisco, California; if to the Tenant care of Oceanic Properties, Inc., 1 Bush Street, San Francisco, California; and if to any Lender, at the address shown in the notice given to the Commission pursuant to paragraph 7(g) hereof; provided, however, that any such address may be changed from time to time (1) by the Commission by notice delivered to the Tenant or (2) by the Tenant or the Lender by notice delivered to the Commission.

25. ACCESS:

The Commission represents and warrants that the Tenant at all times shall have full rights of ingress to and egress from the leased premises, adequate for all of the uses to which the leased premises may be devoted hereunder, and the Commission shall co-operate in and assist in securing, and to the extent possible shall grant, all easements and rights of way necessary therefor. A default under this paragraph 25 shall enable the Tenant to terminate this Lease, or to recover all of its damages by reason of such default from the Commission, or both.

26. SHORT FORM.

A short form of this Lease shall be executed and acknowledged in form and substance satisfactory to the Tenant and in a manner suitable for recording, if requested by the Tenant prior to the expiration of sixty (60) days after the date of this Lease.





27. NO PARTNERSHIP.

Notwithstanding the provisions herein for the payment of percentage rentals or any other provision hereof, it is expressly understood and agreed that the Commission shall not be construed or be held to be a partner of the Tenant.

28. WAIVER OF SUBROGATION:

The Commission and the Tenant each hereby release and waive their entire right of recovery (legal, equitable or otherwise) against the other and the employees, sublessees, licensees and concessionaires of the other for any and all loss or damage occasioned, caused or incurred by, or resulting from, any peril enumerated in the then standard form of fire insurance policy and extended coverage endorsement, whether caused by negligence or otherwise. Any policies of insurance which either party may obtain upon any of its properties shall contain an appropriate provision or endorsement whereby the insurance company issuing such policy consents to the release of liability herein contained and waives all rights of subrogation.

29. QUIET ENJOYMENT:

The Commission hereby covenants, warrants and agrees that at all times during the term of this Lease the Tenant shall have full, peaceful and quiet enjoyment of the leased premises so long as the Tenant is not in default hereunder.

30. ADDITIONAL RIGHTS OF TERMINATION:

If the Tenant does not commence construction of the minimum improvements specified on the Scope of Development by \_\_\_\_\_, 19\_\_\_\_, the Commission may terminate this Lease by giving written notice of such cancellation to the Tenant.

31. EFFECT OF TERMINATION:

Upon any termination of this Lease pursuant to any provision herein contained, both parties shall be released from any liability thereafter accruing hereunder, subject, however, to the provisions of subparagraph (b) of numerical paragraph 6 hereof.

32. DEVELOPMENT AGREEMENT:

This Lease has been executed pursuant to the provisions of



that certain Development Agreement, dated \_\_\_\_\_, 19\_\_\_\_, between the parties hereto, and shall be subject to the terms and provisions thereof; provided, however, that no default under any other Lease covering or leasing any portion of the Project Area, and no default under the Development Agreement with respect to any property other than the leased premises, shall constitute or be deemed to constitute a default hereunder.

33. NONDISCRIMINATION PROVISION:

Nondiscrimination provisions are attached hereto, marked "Exhibit C" and made a part hereof. Where the term "Contractor" is used therein, it shall be deemed to mean "Tenant".

34. SUCCESSORS AND ASSIGNS:

The covenants and conditions herein contained shall, subject to the provisions of paragraph 9 hereof, apply to and bind the heirs, executors, administrators, personal representatives, successors and assigns of all of the parties hereto.

35. MODIFICATION:

Whenever it appears to be in the public interest, the parties hereto, by mutual agreement in writing, may alter or modify the terms of this Lease, or may terminate the same, with such adjustments and for such considerations as they may deem fair and equitable in the circumstances.

36. SUBLEASE CLAUSE:

Tenant shall include in each sublease a clause to the effect that if the sublessee fails to use the subleased property for the purposes for which the property is subleased, and such failure shall continue for a period of sixty (60) days after written notice from the Tenant or the Commission requesting that the sublessee use the property as required, and unless such failure shall be for reasons beyond the control of the sublessee, then the Tenant (or the Commission after termination of this Lease), at its option may terminate the sublease.





37. MINERAL RESERVATION:

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the leased premises. In accordance with the provisions of that statute, the Commission shall and hereby does grant to the State of California the right to explore and drill for, and extract, said subsurface minerals, including oil and gas deposits, from any one or more but not to exceed three points selected by the State of California, which points were not improved on August 13, 1969, and are on a line parallel with and 100 feet South of the Southerly boundary of the Project Area as defined in the Development Agreement referred to in paragraph 32 hereof.

38. SIGNS:

No outside sign visible from the Embarcadero, or the Embarcadero Freeway, or the Bay, shall be erected or installed on the leased premises without the approval of the Commission, but such approval shall not be unreasonably withheld.

39. TIME OF ESSENCE:

Time is the essence of each and all of the terms and provisions of this Lease, and the terms and provisions of this Lease shall extend to and be binding upon and inure to the benefit of heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the Commission and the Tenant have executed this Lease on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

SAN FRANCISCO PORT COMMISSION

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner





\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

WATERFRONT DEVELOPMENT CO., a Joint  
Venture

By OCEANIC BAY COMPANY, INC.

By \_\_\_\_\_  
\_\_\_\_\_  
President

ATTEST: \_\_\_\_\_  
\_\_\_\_\_  
Secretary

By KIPCO, INC.

By \_\_\_\_\_  
\_\_\_\_\_  
President

ATTEST: \_\_\_\_\_  
\_\_\_\_\_  
Secretary



## EXHIBIT D

### Scope of Development

The Tenant shall develop the Project Area, or shall cause the same to be developed, in accordance with the following criteria:

1. General Conditions. All applicable rules, regulations and controls governing the development of the Project Area should be applied against the total Project Area and with respect to the total improvements made or to be made thereon. The Tenant shall be responsible for obtaining any approvals, variances and permits required from the City and County of San Francisco, the Art Commission, the City Planning Commission of the City of San Francisco, the Bay Conservation and Development Commission, and any other authority, department, agency or officer having jurisdiction, but the Commission shall cooperate in connection therewith.

2. Bay Coverage. The Project Area shall be covered by platform or decking to the extent deemed necessary by the Tenant for the other improvements or to support the economic uses, including access ways and space for other amenities deemed desirable by the Tenant in order to create a desirable and high quality environment in the Project Area. The Tenant's present development plan provides that the platform or deck shall not cover more than 50% of the Project Area.

3. Land Uses. The Project Area may be developed for and devoted to any one or more or all of the following uses:

- (a) Multi-Family Residential;
- (b) Retail and Service Commercial and Entertainment Facilities;
- (c) Hotels and Motor Hotels - and ancillary facilities including, but not limited to restaurants, bars, ballrooms, convention space, meeting rooms, commercial shops, beauty and barber shops and similar uses;
- (d) Office Buildings;





(e) Parking; and

(f) The area along the edges of the platform but within the Project Area may be used by the Tenant for marina facilities, commuter ferry slips, exhibition space and similar uses.

The provisions of this Exhibit D are and shall be subject to the conditions set forth in the Development Agreement of which this Exhibit D is a part.

4. Height. The height of structures shall be governed by applicable zoning and other regulations, but the Tenant may obtain variances and modifications from applicable authorities having jurisdiction.

5. Public Access. Vehicular and pedestrian access to the public areas in the Project Area shall be provided to the extent compatible with the architectural objectives and desirable security precautions within the Project Area; provided, however, that such access in any event shall be provided to the extent now required by law.

6. Parking and Loading. Parking and loading, at the option of Tenant, may be permitted on, above and below the major pedestrian surface in the Project Area. Parking and loading spaces shall be provided to the extent required by the San Francisco Zoning Code unless and except to the extent those requirements may be waived or varied by applicable authorities having jurisdiction to do so.

7. Future Development. No future development shall be authorized or permitted by either the Commission or the Tenant which would deprive the Project Area of access to San Francisco Bay or deprive the Project Area of a clear view of San Francisco Bay in a northeasterly direction limited, however, on the north and the south by the boundary lines of the Project Area. No other development, other than sidewalks, fire hydrants, street lighting, parking meters, subsurface utilities and landscaping, shall be permitted between the Eastern curb line of the Embarcadero and the Western boundary of the Project Area.

8. Staging. The Project Area may be developed by the



Tenant in a single stage, or in two or more stages, at its option. If such development is accomplished as a single stage, then such single stage shall be deemed to be the "First Stage" for the purposes of the Development Agreement, and the time period specified in Exhibit E with respect to the First Stage, shall apply, except that the improvements shall be completed with the time specified in Item 5 of Exhibit E instead of the time specified in Item 4 of said Exhibit E. In any event, unless excused pursuant to the provisions of the Development Agreement, all of the improvements shall be completed within 96 months after the commencement of construction of the improvements included in the First Stage.

The total improvements, exclusive of the platform, to be constructed in the Project Area shall consist of at least 1,500,000 square feet of gross floor area, exclusive of parking, and the improvements included in the First Stage shall consist of at least 750,000 square feet of gross floor area, exclusive of parking.

The improvements included in any stage may be constructed for any one or more or all of the land uses set forth above, at the option of the Tenant.



Tentative Schedule of Development

Subject to the conditions and provisions of the Development Agreement, the Tenant shall complete each of the following items with respect to the development of the Project Area prior to the expiration of the respective time periods indicated after that item:

<u>Item No.</u>	<u>Description of Item</u>	<u>To be Completed:</u>
1	Completion of Design Development Documents for the improvements included in the First Stage	Prior to the expiration of 12 months after the last to occur of: (i) the date of execution of the Development Agreement by the Commission, or (ii) the date upon which all zoning approvals, approvals of the Secretary of the Army, the Corps of Engineers, and all other approvals, waivers and variances (excluding building permits) required from applicable Federal, State, City and other officers, agencies, boards, commissions and authorities for the development, construction and operation of the project shall have become effective.
2	Completion of Working Drawings and Specifications covering improvements included in the First Stage	Prior to the expiration of 12 months after the Design Development Documents on the First Stage shall have been approved by all officers, agencies, boards, commissions and authorities having jurisdiction and whose approval is required.
3	Commencement of demolition of existing improvements in that portion of the Project Area included in the First Stage, and commencement of construction of the improvements included in the First Stage	Prior to the expiration of 6 months after: (i) the Working Drawings and Specifications with respect to the First Stage improvements shall have been approved by all officers, agencies, boards, commissions and authorities having jurisdiction and whose approval is required, and (ii) the





<u>Item No.</u>	<u>Description of Item</u>	<u>To be Completed:</u>
		building permit for the First Stage shall have been issued, and (iii) all other permits, variances and waivers necessary for the construction of the First Stage improvements shall have become effective.
4	Completion of the Improvements included in the First Stage	Prior to the expiration of 30 months after commencement of construction thereof.
5	Completion of construction of all of the remaining improvements	Prior to the expiration of 96 months after the commencement of construction of the improvements included in the First Stage.

The Tenant shall use due diligence to obtain all of the approvals, permits, waivers and variances referred to above.

The Tenant, at its option, at any time may accelerate the date for commencement or completion of any one or more or all of the foregoing items. All of the dates herein provided are subject to extension pursuant to the provisions of the Development Agreement.

The Development Agreement contemplates that electricity, gas, water, sanitary sewers, storm sewers and all other utilities will be available at the boundary of the Project Area throughout the construction periods, and will be adequate to service each stage of the Project upon completion of that stage. The Commission shall render all reasonable assistance to the Tenant in obtaining installation of all such utilities but the Commission shall have no liability if any of such utilities shall not be installed or available. The Tenant shall not be obligated to commence, or having commenced to proceed with, construction of any stage or stages unless such utilities are so available and the time periods set forth above shall be extended for any delay in the availability of such utilities and for the period of any delay in the removal of any utilities, railroad tracks or other improvements located in the Project Area on the date of the commencement of the term of a lease on that portion of the Project Area. The Tenant shall use due diligence to obtain the removal and installation of utilities in accordance with the foregoing provisions.





